SENATE—*Wednesday, March 5, 1997*

The Senate met at 12 noon, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by Chaplain Charles H. Richmond, national chaplain of the American Legion, Edmond, OK. Pleased to have you with us.

PRAYER

The guest Chaplain, Dr. Charles H. Richmond, national chaplain of the American Legion, offered the following prayer.

Let us pray.

Almighty God, to You our Creator, Supreme Judge, and God of all nature we pray. As we pledge allegiance to our God and the flag of our country, may it not be a mere salute to custom or tradition, but a sincere desire to know and to follow Thy will. We need not ask for Thy presence, because You are always near. Instead we pray that we might have receptive hearts and minds, in tune with Thy will, so that we may listen to Your voice. The weight of responsibility is heavy. The Holy Scripture speaking of government says, "There is no authority except that which God has established. The authorities that exist have been established by God * * * for the authorities are God's servants who give their full time to governing." We give thanks for men and women who are willing, able, and committed to government service. Give our leaders the continued strength, integrity, courage, and wisdom not only to govern, make laws and policies, and direct our Government, but also to lead the American people in right living and patriotism. Give us the wisdom and conscience to know what is right, and the strength to do what is right, that we may truly pray "God bless America."

Mr. NICKLES addressed the Chair.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

The PRESIDENT pro tempore. The able assistant majority leader, Senator NICKLES, is recognized.

Mr. NICKLES. Thank you very much, Mr. President.

DR. CHARLES H. RICHMOND, GUEST CHAPLAIN

Mr. NICKLES. Mr. President, I thank the guest Chaplain, Dr. Charles Richmond from Edmond, OK, for a beautiful prayer. I also thank him for his service to our country as national chaplain of the American Legion, but also for his lifetime of dedication and service to God and country in his capacity as a leader.

He has given his time to the American Legion, first serving as chaplain of the Oklahoma American Legion Boys State for the past 5 years and, more recently, becoming the national chaplain of the American Legion in September 1996.

Dr. Richmond is an ordained Southern Baptist minister. He has touched the lives of the members of many churches throughout Oklahoma and across our country. Although now retired, he continues to be active in many church and religious activities.

Dr. Richmond has been an educator. He has also served as a public schoolteacher, a coach, a counselor, and a principal. In addition, he served as dean of men and later dean of student affairs at the University of Central Oklahoma for over a quarter of a century.

Dr. Richmond began his lifelong dedication to God and our country as a young man. In 1942, he entered World War II, the youngest person ever to enter the Chaplain Service. Only 30 days after entering the Army, he was sent overseas to Asia, where he devoted 2½ years to serving United States troops during the China, Burma, and India campaign. In 1950, he was reactivated with the Oklahoma National Guard and served in Korea and Japan. While in Japan, he led the building of a Christian church which spawned 22 churches and missions over the next 10 years. Dr. Richmond later served 20 years as division chaplain of the Oklahoma National Guard.

Dr. Richmond has served the community of Edmond as president of the Edmond, OK, club of Rotary International. In March 1996, he was chosen to serve as the Oklahoma State Senate chaplain.

Today, I am honored to recognize Dr. Charles Richmond, a great American and Oklahoman, as guest Chaplain in the U.S. Senate.

Dr. Richmond, again, I thank you for an outstanding prayer, words of encouragement—one that I hope all of us will certainly pay attention to.

SCHEDULE

Mr. NICKLES. Mr. President, on behalf of the majority leader, I announce that following morning business today, the Senate will begin consideration of Senate Joint Resolution 5, the waiver resolution for the Barshefsky nomination, at 1 p.m. Under a previous order, there will be 3 hours of debate on the Hollings amendment and 1 hour of debate following the resolution itself. Following disposition of the amendment and the resolution, the Senate will proceed to a vote on the nomination of Charlene Barshefsky, to be U.S. Trade Representative. Therefore, Senators can expect several rollcall votes throughout Wednesday's session of the Senate.

I thank my colleagues for their attention.

CHANGE OF ALLOCATION OF MORNING BUSINESS TIME

Mr. NICKLES. Mr. President, I ask unanimous consent that the morning business time allotted to Senator GRAHAM of Florida be allocated to Senator DORGAN.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

MEASURE PLACED ON CALENDAR—SENATE JOINT RESOLUTION 22

Mr. NICKLES. Mr. President, I understand there is a resolution at the desk that is due for its second reading.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 22) to express the sense of the Congress concerning the application by the Attorney General for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 Presidential election campaign.

Mr. NICKLES. Mr. President, on behalf of other colleagues, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The joint resolution will be placed on the calendar.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will be a period for the transaction of morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein not to exceed 5 minutes each.

The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Thank you, Mr. President.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

PARTIAL-BIRTH ABORTION

Mr. SANTORUM. Mr. President, this morning, I attended a press conference with Representative CHARLES CANADY from Florida, as well as Senator HATCH and Congressman HYDE, the chairmen of the respective bodies' Judiciary Committees, to introduce the House bill, which is companion to the bill I introduced last month, on the issue of partial-birth abortions.

At that press conference, Senator HATCH and Chairman HYDE announced a joint House-Senate Judiciary Committee, calling witnesses before the joint committee hearing to talk about previous testimony given by those organizations to Congress in light of the disclosure of Ron Fitzsimmons, who heads an organization of abortion clinics, that he "lied through his teeth," and others, likewise, I will add—this is me speaking, not him—lied through their teeth in telling Congress and the American public the situations in which the partial-birth abortion procedure was used and the number of times that procedure was used.

I said at that press conference, and I will say to my colleagues in the Senate today, as I did last year when we debated this bill, I am hopeful that as a result of the new information having been brought to light, not just with Mr. Fitzsimmons but, frankly, over the past year or so, with this new information that has been brought to light not just by him, but by newspaper reports, magazine reports from the mainstream media, that we will have Members of the Senate on both sides—I ask everyone to relook at this issue and base your decisions on the facts as we now know them, not the misinformation or disinformation given out by organizations like the National Abortion Rights Action League or Planned Parenthood or others who deliberately lied to the American public, misled the American public on a variety of issues.

First, they came to the Congress and said—in fact, look at Members of Congress on the House side, going to the well, saying this was true because these organizations said it was true, that the procedure was done under anesthesia and the anesthesia killed the baby.

We had an anesthesiologist come forward and say, "Wait a minute, we have women now who won't get anesthesia to deliver children," which is normal in this country, of course, "because they are afraid they are going to kill their baby," and so they had to back off. "Well, we didn't really mean that." Well, of course they meant it. They testified to it.

Then the next great lie was that this was a procedure done, you know, with only a few hundred a year, only with women whose health was in danger or whose children were fatally deformed, and, as a result of that, we need to have this option available. "There's only a few hundred a year."

In fact, you know, tap into NARAL's home page. You will find the information still there. At least it was a couple days ago until some people found it. Now they may have pulled it. But they still say there are only a couple hundred being performed and only in the third trimester. That was their argument all along. It is a lie. That is what Mr. Fitzsimmons says—he lied through his teeth.

How would he know? He is the president of an organization of abortion clinics. He called up the doctors of the clinics, and the doctors said, "No. We perform this fairly routinely," not just on third trimester babies—and some are—but the vast majority—95 percent is my guess, or even more—are on healthy mothers with healthy babies in the fifth and sixth months of pregnancy. Those are the facts.

If Members of this body will look at those facts and vote based on the facts as we know them—this procedure, which involves taking a baby, late term, fifth, sixth, in rare cases seventh, eighth, maybe even ninth month, but in rare cases in that situation, taking this baby, delivering the baby feet first, delivering the entire baby except for the head, then taking a pair of scissors and puncturing the base of the skull, sticking a suction tube in there and suctioning the brains out, killing the baby and then delivering this now dead baby.

If the Members of the U.S. Senate know, as we do know now, that that happens, not a few hundred times—in my opinion, a few hundred times is pretty horrible—now several thousand times, at least according to Mr. Fitzsimmons, 3,000 to 5,000—given the industry track record on what they report, probably multiples of that, but at least that many—whether we are going to condone healthy moms, healthy babies, some of them viable, being allowed to have this abortion done in this just most gruesome manner.

So I ask the Members of the Senate to not just fall into your camp that you are comfortable with, you know, if you are pro-choice, "I've got to be pro-choice." This is not pro-life, not pro-choice, certainly not Democrat or Republican. There were Democrats at the press conference. Democrats have been some of the most vocal supporters of this bill. This is an issue of who we are as a country and who this body is as a Senate.

We have a life-of-the-mother exception. I know Members continue to get up and say, "Well, we need to do this to protect the life of the mother." There is a life-of-the-mother exception. It is clear. It is solid. No one who reads it would say it is anything but a life-of-the-mother exception.

So, if this procedure needs to be done to save the life of the mother, which I have not found anybody who says it is necessary, but if it is, you can do it. But after that, this procedure must be made illegal, given the facts as we now know them.

So I am asking Members, new Members who have not voted on this issue, and Members who have voted the other way in particular, to take a look at this information.

Let me challenge folks here in the other gallery, in the news media, to start doing your homework. This information was readily available. All you had to do was report it. All you had to do was look. All you had to do is ask. I know you folks love to believe people who agree with you, and you take that as gospel. Well, do your work. Investigate. Find out the truth.

The American public just does not want to hear what your friends in these organizations say is the truth. They want to know the real truth. It is your job to tell them. We tried to tell them. We were here giving you the facts. You just decided not to report them. Tell the truth. Let the American public know what is really going on out there. When they continue, as they will, to lie on television, these organizations, to try to hide their dirty secrets, call them on it. Quit pandering to the other side. You owe it to the country. We are talking about lives of innocent babies here. You owe it to your profession. We owe it to the country. I yield the floor.

Mr. BROWNBACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized for up to 30 minutes.

Mr. BROWNBACK. Thank you, Mr. President.

I certainly appreciate what the Senator from Pennsylvania was just stating on this very critical issue on partial-birth abortions. It is a sad situation that has occurred in this country. I am hoping that this body and this Nation and this Government can respond to this situation.

AN UNLIMITED AMERICA

Mr. BROWNBACK. Mr. President, the era of big Government is over. May it rest in peace. In its place a new era is about to unfold. An unlimited America with a smaller Federal Government, economic opportunity for all, and a renewed culture.

An unlimited America was the vision for the Nation set forth by our Founding Fathers. It is the vision enshrined in those two great charters of freedom: our Declaration of Independence and our Constitution. Many of America's most intractable problems stem from the fact that we've strayed from that vision—and lost direction. But I have no doubt that if we can recapture the Founders's vision of limited Government, personal responsibility, and economic opportunity that America's greatest days will be yet to come.

The Founding Fathers of our Nation believed in the people. They created a

new nation based on the radical notion that the people could be free and trusted—that the nation would be great if you trusted the people to be good. Before the birth of America, individual rights only existed so far as the grace of the dictator or monarch allowed. They were believed to have a divine right to rule, because it was thought that the people could not be trusted to rule themselves.

Our Founders believed that the people had the right to govern themselves—and that government derives its power from the consent of the governed. But this right also imposed a requirement on "We the People": We must be a moral and just people. John Adams put it this way, "Our Constitution was made only for a moral and religious people. It is wholly inadequate for the government of any other."

Yet, today, we have placed the Government in the role that was reserved for citizenship. We have gone from "We the People" to They the Bureaucracy.

In our recent efforts to create a more perfect union we have relied too much on the Government and too little on ourselves. We have forgotten that self-government demands the habits and virtues required for such a government. "Republican government," James Madison noted, "presupposes the existence of these qualities in a higher degree than any other form." Yet at some point we decided that goodness for the Nation simply came from the greatness of government. But the greatness of our Nation can never be measured by the size of our GDP or even the strength of our armies. National greatness rises from personal goodness.

And that is the starting point for ending the era of big Government and beginning the era of an unlimited America. Our mission is to re-limit the Federal Government; to release economic opportunity for all our citizens; and to renew our families and our culture. In my view these principles are not divisible—if any one is missing, the old era will not give way to the new and America will not return to the straight path—the only path which leads to national greatness.

RELIMITING GOVERNMENT

Fifteen years ago, President Reagan spoke before the British Parliament and made a prediction that shook the world. We were witnessing, he declared, "a great revolutionary crisis—a crisis where the demands of the economic order are colliding with those of the political order." The Soviet Union, which seemed at the height of its power, was running "against the tide of history by denying freedom and human dignity to its citizens." Despite all its tanks and missiles, the Soviet Union would soon be swept aside by the "march of freedom and democracy"—leaving—"Marxism-Leninism on the ash heap of history."

Many of Reagan's listeners thought he was dreaming. But Ronald Reagan had faith in freedom. He knew that communism, though militarily powerful, was ideologically dead. He knew what our founders knew: that in a truly legitimate government, power does not come out of the barrel of a gun, but only from the consent of the people. In a few years the Berlin Wall came tumbling down and the Evil Empire crumbled with a suddenness that astonished supporters of freedom and rocked the world's remaining tyrants.

Today big Government is facing the same internal crisis as the Soviet empire was in 1982. Big Government is institutionally strong, but structurally weak. It is backed by armies of special interests that ferociously protect their budgets and intimidate anyone who challenges their subsidies, but it has been abandoned by the American people.

Our mission is to implement big Government's replacement—to unite the principles of economic freedom and the cause of cultural renewal to forge a new governing consensus that will lead America into the 21st Century. Conservatives sometimes forget that limiting government is not an end in itself, but a means to a better society.

We must remember that our Federal Government has helped America achieve many great things in this century. Along with our allies, we defeated two potentially mortal threats to freedom: fascism in World War II and communism in the cold war. Government built the Interstate Highway System that helped create our modern economy. It established Social Security and Medicare systems which have sharply reduced poverty in old age, and enabled senior citizens to live longer and in better health. Through student loans and the GI bill, it offered educational opportunity to those who might have otherwise been denied. And it enforced civil rights laws in the 1960's when it was clear that State governments could not protect the civil and political liberties of all Americans.

But today, America's problems are different. And they require a different response by government.

Unlike 50 years ago, our most difficult problems cannot be solved by the benevolent hand of a powerful, centralized bureaucracy. We can still have an effective Government, without a big Government that takes away our freedoms and degrades our values.

UNLEASHING AMERICA'S ECONOMIC POTENTIAL

As I stated, our mission is to implement the replacement of big Government—to unite the principles of economic freedom and cultural renewal to forge a new governing consensus that will lead America into the 21st century.

The principles of economic freedom are the very same principles that will bring forward a renewed culture and a society of limited government. Faith, family, and freedom: these are the values that make both our national economy and our national character strong. When government undermines these values, it hurts our families and our economy. Today, big Government is holding back our economy and preventing our people from reaching their full potential.

Perhaps, the most obvious evidence is the fiscal bankruptcy of the Federal Government. Today, we are more than $5.3 trillion in debt—a crushing burden that amounts to over $20,000 for every man woman and child. We are broke. And the budget deficits of today are minor compared with the fiscal disaster that will confront us in the early 21st century when Social Security and Medicare are unable to pay their bills.

But huge deficits and skyrocketing debt are just one problem.

Americans currently labor under a tax code so complicated that even tax lawyers and accountants can't understand it. We tax personal income two and three times before a citizen can see a return on his work or investment. Our people must work until May 8 just to pay their taxes to the Government before they can earn a penny to support their families.

Our Tax Code is one of the greatest remnants of an over-intrusive big Government. It is perhaps the single greatest obstacle to greater individual freedom and prosperity. Ronald Reagan made enormous progress during his presidency, scaling the top rate from 70 percent down to 28 percent. But since then, taxes have gone up—under both Republican and Democrat presidents

The power to levy and collect taxes was meant to fund a constitutional Government, not to become a political device in and of itself. Today, our central Government discourages certain behavior and rewards others based purely on the whims of those who control the tax monster.

And as long as the current tax system exists, we will have not met the challenge of replacing big Government and America's potential will never be fully reached.

In other examples of big Government, we have over 340 Federal "economic development" programs which redistribute capital from productive citizens to bureaucratically-favored entities. Our regulatory state imposes hidden taxes on our families, our businesses and our dreams without truly measuring the consequences and weighing the alternatives. And our political class has become satisfied with expanding our economy at a lethargical pace. Meanwhile, entrepreneurs are being denied capital for their innovative ideas, parents are spending more time at work and less at home, and the American dream is slipping away from more and more families.

Many of these barriers are leftover from the great experiment with big

Government that is entrenched in our system. Defenders of this system may be winning the battle, but they cannot win this war of ideas. The economic future of our country is inextricably tied to our people.

This is why I am optimistic that we will break the bonds that are stifling the innovation and creativity of our people. As this new wave of information technology grows into each household and every new child's mind, the system that relied on Government experts to guide our economy will be washed away in a tide of entrepreneurial capitalism that will make the industrial revolution pale by comparison. Legions of entrepreneurs with innovative ideas, exciting energy and new talents will bring forth the inevitable implosion of today's redistributive and elitist economic policy. And our job as people who love freedom is to do everything we can to help advance this process.

RENEWING THE AMERICAN CULTURE

We must also not forget that a nation must be full of good people before it can be a great nation. George Washington, in his First Inaugural, said that there is "no truth more thoroughly established than that there exists in the economy and course of nature, an indissoluble union between virtue and happiness; between duty and advantage." As a result, he predicted that "the foundation of our national policy will be laid in the pure and immutable principles of private morality."

If this is true—and I believe it is—then certainly the best predictor of future greatness is current goodness.

Where are we today on the goodness of the Nation? If we were to measure gross domestic piety in America we would ideally view the nature of each persons heart. Seeing as we cannot measure another's soul, we are left to measure actions and extrapolate from it goodness.

The number of crimes committed does tell us something about the soul of the nation. So does the number of abandoned households, the divorce rate, the rate of teenage suicide and abortion. If these are extraordinarily high, can anyone disagree that the goodness of the Nation has declined and its long-term success is in jeopardy?

But let me make a bold statement here. America is in ascent again. While I have just spoken about the many terrible and vexing problems of our Nation, this Nation has always shown an ability to deal with its problems once it focuses on what those problems are.

I believe today we are focused on the problems of America. We are seeing the limits of Government and the needs of the hearts of our people. Many of our citizens are realizing that in their individual actions—each and every day touching, loving, encouraging, and caring for their fellow man and woman—that they have the power to continue America as a great Nation.

A NEW GOVERNING CONSENSUS

Men and women all across this Nation like Pastor Reid are mending America's social fabric by reviving the families, civic organizations, and faith-based institutions that teach character and nurture the soul. They may not all think of themselves as conservatives, but they embody the conservative way of thinking. And they are rediscovering the principles of limited self-government, personal responsibility, and entrepreneurial capitalism that the founders envisioned for America.

The restoration of America's civil society has replaced the fight against communism as our central need and our central focus. This need unites libertarians with their emphasis on a free society with cultural conservatives with their emphasis on faith, family, and responsibility with pro-growth Americans who want to free up the genius of the American people through entrepreneurial capitalism. This vision, a vision of freedom, responsibility, and growth can form the core of a new conservative governing consensus.

Our cause should be unified, not fractured. Americans of all sorts should work together to restore this common vision of a limited government so we can open markets, free up individual creativity, and above all else, renew the American culture. Indeed, the sum of these goals is essential to the whole of our destiny as a nation.

This isn't a utopian fantasy or wishful thinking. Americans and our Government have practiced these principles before, and we will do so again. When Alexis de Tocqueville visited America in the 1830's, he discovered the most democratic, most egalitarian, most religious, most prosperous, and most charitable country on Earth. It was a country of limited national Government, and active citizen participation in local government. Every community had newspapers describing how citizens formed voluntary associations to solve problems instead of expecting them to be solved by politicians.

The industrial revolution of the late 19th century and the early 20th century was a time of rapidly growing entrepreneurial capitalism and great personal achievement. It was no coincidence that this period also saw the creation of the Red Cross, the Boy Scouts and Girl Scouts, YMCA's and YWCA's, hundreds of private colleges and universities, and countless other organizations that strengthened character and addressed the problems of their communities.

This explosion of community organizations and faith-based institutions coincided with an economic, cultural and moral reawakening that touched America in many ways. As the great scholar James Q. Wilson has written, crime went down in the second half of the 19th century even though this was a period of rapid industrialization and urbanization. The rate of abortions fell in half during this period. Again, government did not create this development, people did.

Today there are signs that America is entering another great revival of civic, voluntary activity. In the tradition of Jews, Mormons, and other religious groups with strong charitable traditions, conservative Evangelicals and Catholics run schools for low-income children. They operate maternity homes that give unwed mothers the love and support they need to choose life. They go into our cities' meanest streets and prisons to rescue gang members, drug dealers, and prostitutes from lives of violence, addiction, and desperation. Name a social ill afflicting our cities—poverty, unemployment, illiteracy, illegitimacy—and you will find a self-selected, religiously affiliated program attacking the problem with prayer and sweat and a small army of volunteers.

Some scholars say that America is entering a fourth great awakening, a revival of religious faith and fervor. In the American political tradition, freedom and religious revival have always gone together. The first great awakening helped inspire the American Revolution, and religious faith was at the center of the anti-slavery and civil rights movements. And as the call for freedom grows with this revival, we will have the chance to restore an unlimited America where Government will focus on self-limitation, people will focus on self-governing, and our society will grow and prosper both economically and culturally creating an era of an unlimited America.

I have no illusions about the problems we face. Ours is the work of generations. But today the American people have a choice to make. We can either continue along the path of administrative, bureaucratic Government and follow the tired mediocrity of big Government, or we can begin the long and difficult task of rebuilding an America that knows no limits.

To follow this path we must do two things:

First: The creed of America is to be found in the Declaration of Independence, which Jefferson called "an expression of the American mind." We must renew our commitment to these principles, return to our Constitution and reassert ourselves as a free, self-governing people.

Second: America has always had within itself a deep source of regeneration. It gains nourishment from its many, varied roots; its history, its religious faith, its free market and its immigrant heritage. And what holds us all together is America's love of liberty, deep in the hearts and minds of the American people. We must renew

what Washington called "the sacred fire of liberty" and set it ablaze across the land.

These are not easy tasks. Yet I remain an optimist for these are powerful forces on the move in our society. I don't know about you, but I have every confidence that Americans will choose the right path for themselves, and for future generations that have yet to enjoy the blessings of freedom. And as we do, we will establish the era of an unlimited America.

Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may proceed for not to exceed 12 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank the Chair.

EACH SENATOR IS ACCOUNTABLE ONLY TO HIS OWN CONSTITUENTS

Mr. BYRD. Mr. President, on several occasions during the last few days some of the proponents of the balanced budget amendment here in the Senate have taken to the floor and to the airwaves, and other ways to criticize those Senators who have seen fit to follow the dictates of their own conscience and oppose the balanced budget amendment which was defeated in the Senate by a single vote last evening.

In the main, these attacks seem to have been directed especially at those Members who may have indicated support for a balanced budget amendment during a campaign, but found it impossible to support the particular amendment which was put before the Senate for a vote.

I should say parenthetically at this point that I voted for the balanced budget amendment in 1982. I had not thought much about it at that time. I had not studied it. But following my vote for that amendment on that occasion I decided to study the matter and to consider it seriously, and consider the impact upon the Constitution. And I changed my vote from 1982 to 1986. In 1986 I voted against a constitutional amendment to balance the budget, and I have been against it ever since, and I always will be against it because I have given it thorough consideration and thought. And I have come up with a conclusion that I am very comfortable with.

So there are those who may have indicated support for a balanced budget amendment during the campaign but found it impossible to support the particular amendment, as I say, which was put before the Senate for a vote on yesterday.

I rise today to again congratulate those Members, who, after careful study of the specifics of this particular amendment, had the intelligence and the courage and the vision to discern the amendment's obvious flaws, and the courage to follow the dictates of their own consciences.

More and more the trend today in political life in America is to blindly endorse proposals, simply because they are popular or because they fit neatly into a set of ideological preconditions endorsed by one political party, or the other. The specifics, the details, the actual impact of many of these political "no-brainers," if you will, is glossed over in favor of the attraction of simplicity and ideological purity. Just as we have "dumbed down" our textbooks, the last decade has made a "dumbing down" of our politics as well. I often think that we insult the American people with the obvious demagoguery which spews forth from Washington in the form of pandering and very-very-tired, old cliches.

I would like to remind my colleagues that law and legislating is about the examination of details. We don't legislate one-liners, or campaign slogans. Here, in this body and in the other body, we put the force of the law behind details that impact mightily upon the daily lives of our people. That is a solemn responsibility. And it is more important than political popularity, or winning the next election or marching lockstep to the orders of one political party, or another.

Especially in the case of amending the Constitution, that responsibility weighs more heavily. For in that instance we are contemplating changes in our basic, fundamental organic law—changes that, when once implanted in that revered document, can only be removed at great difficulty, and which will impact, quite possibly, upon generations of Americans who, yet unborn, must trust us to guard their birthright as Americans.

Once the Constitution is amended, it takes quite a while to repeal that amendment, as we saw in the case of the 18th amendment—the prohibition amendment—which became a part of the Constitution in January 1919, and it was not removed from the Constitution until December 1933. In other words, it was in the Constitution for 15 years before it could be repealed. So we have to be very, very careful when it comes to amending the Constitution. It is most unlike passing a law, or amending a law, which can be repealed within the same calendar year here in the Congress.

The suggestion has been made on this floor that to change one's mind and to go against a statement made in a campaign is somehow a disservice to this country. Well, I differ, and I differ strongly. What I think I am hearing on the floor of this Senate is nothing more than an effort to use an individual Member's vote against a popular, but fatally flawed proposal, to cut politically against that Member, and further to use the Senate floor for the crass political purpose of meddling in the politics of several of the sovereign States.

A campaign pledge is one thing, but may I remind all of those who worship at the altar of campaign pledges that there is another pledge that each of us makes as we stand before this body and before we assume the office of United States Senator. That pledge is a solemn oath taken with one hand on the Bible and ending in the words "so help me God."

Now, that is a pledge that will trump all of the campaign pledges. Forget about the campaign pledges. Those who make pledges in campaigns, if it is their first campaign for the Senate, they have not been in the Senate and they have not heard the debate on a given matter. They haven't listened to their colleagues in the Senate. Oh, they have been Members of the House, as I was a Member of the House at one time. But once they enter this body, they are a Member of the United States Senate, the only forum of the States that exists in this great Government of ours. It is a different body. They then represent a different constituency—usually. And so it is quite a different thing.

It is our oath of office that is overriding. In it we swear before the Creator to "support and defend the Constitution of the United States against all enemies foreign and domestic."

A Member of this body having so sworn to uphold that sacred trust is then obligated to do his best to adhere to it according to his best intellectual efforts and the dictates of their own conscience. One does not surrender his or her independence upon becoming a United States Senator. One does not swear allegiance to a political party when he takes that oath of allegiance to the Constitution. That Member is then answerable to God and, under law, to his own constituents. They know about Senators' votes. We don't have to trumpet the votes for the benefit of the constituents of another Senator. Constituents of Senators know about the votes of their Senators, and a Senator is answerable, not to any political party or person, not to any colleague, not to any organization, but answerable only to his own constituents, to his own conscience, and to his own God. He is answerable to his own constituents—the people who trusted his judgment enough to send him here in the first place.

The suggestions which have been made on this floor about the dubious honesty of some Members are more than regrettable. They represent the kind of judgmental rigidity that really has no place in a body such as this.

Let me also say at this point that the threats to run down that last remaining vote so badly desired by the proponents of this amendment by tinkering with language are empty fulminations because this proposal is fatally flawed. It is flawed in a way that cannot be mended because its enactment would forever shift the artful balance of powers crafted by the framers. That is where it is fatally flawed. No language fix can cure the terminal illness of the attempt to write fiscal policy and political ideology into a national charter intended to serve as a guideline for generations. This Senator, for one, will never be a party to grafting this pock-marked monstrosity, largely aimed at adding a star to the crown of one party's political agenda, to the body of our organic law. Now, I realize that several Democrats voted for this amendment. But I don't attempt to be the judge of their vote. Their constituents have that responsibility.

The eagerness to tinker belies the obvious insincerity behind the effort, and the remarks on this floor over the past several days should be enough to convince us all that what is really wanted by some in this body is not the amendment itself, but an issue with which to whip its opponents. This is simple politics, my colleagues. And it is politics at its most unappealing and destructive level.

It is easy to do the obvious thing. It is easy to do the popular thing. What it is not easy to do is to have the courage of one's convictions and to stand up for those convictions. So I say again, thank God for Members such as those who have been so roundly chastised in recent days. Throughout our history, men of courage have made the difference. Cloned sheep who cower at the suggestion of independent thought and action were not what the framers of the Constitution had in mind when they created "the greatest deliberative body" in the history of the world. They had in mind men of courage. Andrew Jackson said, "One man with courage makes a majority." John F. Kennedy wrote a Pulitzer prize-winning book about those Senators who had the courage, on matters of principle, to follow their own convictions. If the advice of some of those who have taken to the floor in recent days had been followed, the pages of that book would be blank and this Senate and this country of ours would never have endured.

Let me close, Mr. President, with the words of Senator William Pitt Fessenden of Maine, from a eulogy delivered upon the death of Senator Foot of Vermont in 1866, just 2 years before Senator Fessenden's vote to acquit Andrew Johnson brought about the fulfillment of Fessenden's own political prophecy.

When, Mr. President, a man becomes a member of this body, he cannot even dream of the ordeal to which he cannot fail to be exposed;

of how much courage he must possess to resist the temptations which daily beset him;

of that sensitive shrinking from undeserved censure which he must learn to control;

of the ever-recurring contest between a natural desire for public approbation and a sense of public duty;

of the load of injustice he must be content to bear, even from those who should be his friends;

the imputations of his motives;

the sneers and the sarcasms of ignorance and malice;

all the manifold injuries which partisan or private malignity, disappointed of its objects, may shower upon his unprotected head.

All this, Mr. President, if he would retain his integrity, he must learn to bear unmoved, and walk steadily onward in the path of duty, sustained only by the reflection that time may do him justice, or if not, that after all his individual hopes and aspirations, and even his name among men, should be of little account to him when weighed in the balance against the welfare of a people of whose destiny he is a constituted guardian and defender.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, am I to be recognized for 15 minutes in morning business under a previous order?

The PRESIDING OFFICER. Yes. Without objection, the Senator from North Dakota is recognized for 15 minutes.

Mr. DORGAN. Mr. President, I thank you.

I enjoyed listening to my distinguished colleague from West Virginia, Senator BYRD.

Edmund Burke said something similar to the words used by Senator BYRD when he closed, and I do not know them exactly, but he was talking about what a representative in a representative government owes to his or her constituency. And Edmund Burke said something like: Your representative owes you not only his industry but also his judgment, and he betrays rather than serves if he always sacrifices it to your opinion.

I do not know if that is an exact statement, but it is close to the expression of Mr. Burke and I think describes the requirement of someone serving in public office in this country to do what they think is right—not to be a weather vane to analyze what is the prevailing wind on Tuesday or Thursday, but to do what they think is right. That is especially important when we are talking about altering the Constitution of the United States.

Mr. BYRD. Mr. President, will the Senator yield?

I thank him for reciting this jewel by a great Irish statesman, Edmund Burke, who I believe lost the next election after he had made that statement. He may have foreseen that, but nevertheless he made the statement. It still lives, and it is a very appropriate guiding charter, in my judgment, for those of us in this Chamber today.

U.S. MERCHANDISE TRADE DEFICIT

Mr. DORGAN. Mr. President, I come to the floor today because we will be taking up an issue dealing with the confirmation of a nominee for U.S. Trade Ambassador. In conjunction with that will be an issue raised by the Senator from South Carolina [Mr. HOLLINGS] on a matter relating to the negotiation of international trade agreements and whether in those negotiations, agreements can be reached that effectively change U.S. law. I intend to support the amendment offered by the Senator from South Carolina. I think he is absolutely correct, and I hope to be able to come and speak to that point when he offers his amendment.

As we begin talking about the nomination of the U.S. Trade Ambassador, I want to take a moment to mention something that occurred about 2 weeks ago which passed almost unnoticed in this town, and it relates to the issue of trade. It relates to the kind of trade ambassador we have and relates to the kind of trade policies we employ.

A couple of weeks ago, we learned that in this last year the merchandise trade deficit experienced by the United States of America was $188 billion—a $188 billion trade deficit. This makes 21 consecutive years of U.S. merchandise trade deficits, with a cumulative total of nearly $2 trillion.

We have spent a lot of time in recent days with books stacked on books 8 feet high in this Chamber showing fiscal policy and budgets. Perhaps we should have a chair or a table that stacks piles and piles of trade agreements and trade deficits one on top of another to show what we owe others in the world from an accumulation of nearly $2 trillion in trade deficits.

That is the other deficit, the deficit no one wants to talk about, the deficit no one wants to address. And yet, it is a deficit that predicts a weakness and a continual weakening in America's manufacturing base. That which we used to produce at home is now all too often produced abroad. That which was manufactured here is manufactured somewhere else. Good jobs that paid well with good benefits here are now offshore. And that is what this deficit spells.

No country in history that I am aware of has long remained a strong, dominant world power without retaining its core manufacturing base, for economic health in any country is not what you consume but, rather, what you produce. What you produce is measured by the strength and the breadth and the dimensions of your

manufacturing base. This trade deficit is injuring our country. No one seems to care much about it or be willing to do much about it.

Six countries comprise more than 90 percent of our current trade deficit: Japan, nearly 30 percent of the deficit; China, 24 percent of the deficit; Canada and Mexico, which represents NAFTA, the NAFTA trade agreement, that is 24 percent of the deficit; Germany and Taiwan together, about 16 percent of the deficit.

NAFTA was one the most recent trade debates we have had in this Chamber. We were told that if we have a free trade relationship with Mexico and Canada, our two nearest neighbors, we would have new vistas of economic opportunity and create hundreds of thousands of new American jobs. Well, NAFTA was passed—not with my vote, but NAFTA was passed. The NAFTA bill was enacted, it is now law, and now we are choking in trade debt with our two neighbors.

The architects of NAFTA knew what they were doing. They constructed a kind of economic cow that feeds in the United States and is milked by both neighbors. No one that I know of can credibly come around to this Chamber who had advertised the virtues of NAFTA and now do anything but be embarrassed with what has happened. What has happened is injuring this country. Giant trade deficits with Canada and Mexico are hurting this country.

Mexico now sends more automobiles to the United States than the United States exports to all the rest of the world. Let me say that again because I think it is important. Mexico now ships more automobiles into the United States of America than the United States of America exports to all of the rest of the world.

We were told: Well, NAFTA, that's just a little old thing so that some of those low-skilled jobs can go down south. They could do some of those low-skilled jobs at lower labor costs down south. So, what are the largest imports into the United States from Mexico today? The product of low-skilled jobs? No. Electronics, automobile parts, automobiles. Exactly the opposite of what was predicted.

My point is that we must be concerned about this, we must be vigilant about it, and we must try to do something about it. We must have the same energy in this Chamber on this issue as there has been exhibited on the issue of fiscal policy, the budget deficits that result from fiscal policy that is out of balance.

There is merit, enormous merit in requiring that we march toward a balanced budget in the fiscal policy in this country because you cannot keep saddling your children and grandchildren with consumption that you now have and saying, well, we are going to consume, but you pay the bills. That is not fair, it is not right, and it is not healthy for this country's economy.

There is something else that is fundamentally unhealthy about this country's economy, and that is our trade relationships that result in this enormous trade deficit that we have, a merchandise trade deficit of $188 billion. I could spend hours talking about the specifics, and I cannot and I will not because I do not have the time. Let me just mention one item, and I will bet not many people understand.

For example: Let's talk about T-bone steak that is shipped from the United States to Japan, just to demonstrate the low expectations we have of those with whom we trade. Some while ago there was a negotiation on beef from America to Japan, and at the end of the negotiation there was a day of feasting, people believing that those who engaged in these negotiations had just won a gold medal at the Olympics. Enormous success, we were told. They crowed about the successful negotiation on beef.

Well, where are we now some years later? We are getting more beef into Japan. That is true. So they all say that is enormously successful. Guess what. There is a 50 percent tariff on American beef being sent to Japan. Does anybody under any set of circumstances believe that is success, that we now are able to get beef into Japan with a 50 percent tariff, and therefore we ought to say, "Hosanna"?

That is not fair trade. That is not free trade. That is not open trade. It is not fair for this country. It is not fair for our beef producers. And I can go through line after line and example after example. T-bones to Tokyo. They ought to go there without a 50-percent tariff on them to be fair to our producers. We purchase much of what they export to us. They ought to purchase what we export to them without impediment.

I do not want to go on. I would like to talk about trade in some more detail, with my colleague from West Virginia, Senator BYRD, and Senator HOLLINGS and others. I would say, for myself, and I expect I could say on their behalf, we do not complain about this as people who believe that we ought to put walls around our country.

I believe in expanded trade. I believe in expanded opportunity. But I darned sure believe in retaining a manufacturing base in this country, insisting that trade around the world be fair trade. Nobody in this country working in a manufacturing plant ought to have to compete with a 14-year-old working 14 hours a day making 14 cents an hour. Nobody under any condition ought to be expected to or ought to have to compete with that, and it happens every day in every way under our trade agreements.

I am just saying the other deficit, nearly $2 trillion at this point, with this year's trade deficit being one of the largest in history, that deficit we ought to care about and ought to do something about.

Ambassador Barshefsky—we are going to vote on her. She is tough. She has confronted a number of other countries on trade relationships in a significant way. I appreciate that. But she is only as tough as the administration will allow her to be in demanding fair trade. The last several administrations, the last four administrations, in fact, have been disappointments to me on trade, including this one. They have done better than previous administrations, but not good enough. It is not good enough for this country.

It used to be, we could handle international competition with one hand tied behind our backs because we were the biggest, the best, the most. That is not true anymore. We face shrewd, tough, international competitors and it is time we understand that trade relationships must be fair and must be balanced, and must care about this country's productive sector as well.

I am not going to speak at length about the amendment offered by Senator HOLLINGS. I do intend to support it when he offers it. I hope to be able to come down and speak about it. But I did want to say a few words, just as a precursor to a discussion we will have about the confirmation of another trade ambassador.

We have had trade ambassadors. We have confirmed them. We have heard the talk about straightening out some of our trade relationships. But year after year, the merchandise trade deficit continues to grow with almost no notice and almost no one seeming to care about its impact on this country.

Mr. President, I expect to come back later in the day when we debate these issues. With that I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. Roberts). The Senator from Ohio is recognized.

Mr. MCCAIN. Will the Senator from Ohio yield to me for just 1 minute?

Mr. DEWINE. I will be happy to yield.

Mr. MCCAIN. I appreciate the remarks of the Senator from North Dakota. The fact is, it is hard for me to understand the argument when the American economy is the best it has been, in the opinion of any expert, in a long, long time. Our unemployment is low, our trade continues to grow, our economy continues to grow. It is a direct result of free trade. How can we make the argument, which will be done later on, that somehow we should be reraising barriers that are protectionist and isolationist when it flies in the face of what every outside expert says has been the main engine of growth of the American economy, and that is free trade?

What Ms. Barshefsky has just done, in the negotiation of the telecom

agreement, is a signal, an important and remarkable advance to the effort of free trade in allowing American companies and corporations into foreign markets so we can hire more Americans and continue to have this remarkable growth in our economy and a bright future for Americans. The debate will be drawn, time after time, and has been, between protectionism, between the desire to raise those protectionist barriers, to go back to the good old days of Smoot-Hawley or whether we are going to move forward with free trade and reduce barriers.

I believe the American people and those people who are engaged in business, those who are in the business of doing business, will strongly support the position that the administration holds of free trade and reduction of barriers for competition.

I yield back to my colleague from Ohio.

Mr. DEWINE. Mr. President, I now ask unanimous consent the period of morning business be extended until the hour of 1:30 and I be permitted to speak for up to 20 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object, I am wondering whether I could reserve 8 minutes of that time, between now and 1:30, as part of the unanimous consent agreement?

Mr. DEWINE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I wonder if my friend from Ohio will yield me just 1 minute of that time now while the Senator from North Dakota is on the floor, to react to his comments?

Mr. DEWINE. I will be more than happy to do that.

Let me just state the topic I want to talk about is going to take awhile. So I will be more than happy to yield. If you go on too long, I will simply come back later on. That will be fine.

Mr. LEVIN. I just ask if the Senator will yield 1 minute, and then I will yield the floor and come back for the remainder of my 8 minutes. But while Senator DORGAN is on the floor, I just wanted to comment for a few seconds. I just wanted to compliment Senator DORGAN for his comments. His speech is a free trade speech. We all have to listen carefully to what he said. That 50-percent tariff on American beef going to Tokyo—it is absurd that we tolerate it.

In NAFTA, we permit, for 25 years, Mexico making it a crime to sell an American used car in Mexico. That is part of NAFTA. NAFTA, for 10 years, restricts American-assembled automobiles from going into Mexico. So, what the Senator from North Dakota is pleading with us to do, is to insist that we have as much access for our manufactured goods and our agricultural products to other countries as they do to our country. I commend him on his remarks and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DORGAN. Will the Senator from Ohio yield 30 seconds to me?

Mr. DEWINE. I will be more than happy to.

Mr. DORGAN. I will not engage the remarks of the Senator except to say we should reserve the decision on this point. One can drive down a street and see a Cadillac in front of an expensive house, and if you do not understand the debt that will be used to repossess the house and the Cadillac, you don't understand the financial position there. The same with our country. The fact is, our abiding trade deficits are undermining our country's long-term economic future and we had better not decide to ignore them. We had better confront them on behalf of American producers and on behalf of this country's interests. This is a debate we must have soon.

I appreciate very much the indulgence of the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized again.

DISASTERS

Mr. DEWINE. Mr. President, let me start by expressing on this floor, as I did this past Monday, my sympathy for the families who have lost loved ones in the last week due to tornadoes, due to flooding and other natural disasters. This has been a very, very tough week. In my home State of Ohio, we are experiencing a flood of once in the last 30 or 40 years magnitude—we have not experienced anything like this since the 1960's. Not only is my home State of Ohio experiencing this, but, of course, Kentucky and Indiana is as well. Vice President GORE is, as I speak, in Ohio, having the opportunity to view firsthand the damage. We appreciate his visit. We welcome it.

We also appreciate the prompt action by President Clinton in designating 14 Ohio counties, to make them eligible for disaster assistance. Governor Voinovich has now made an additional request to the President to add two additional counties, Hamilton County, Cincinnati, as well as Clermont County. Both these counties have been hit exceedingly hard by the flooding. In fact, we have yet to see the high-water mark, which should not occur for a few more hours in Cincinnati and Clermont County, the Richland area—that part of our State.

We really have an area in Ohio from Monroe County, up river, all the way down to Hamilton County. What we have seen is what we always see during tragedies such as this. We see Americans responding. And, in the midst of the tragedy, the suffering, what we see is neighbors helping neighbors and people out there just making a difference. We have Red Cross volunteers. We have emergency department volunteers. We have fire department volunteers. The National Guard is actively involved. But most of all, we have people who are just volunteers, who are just out there making a difference, who do not necessarily belong to any group except they are Ohioans or Kentuckians or Hoosiers from Indiana, and they are out there making a difference in their local communities. So let me pay tribute to them.

The work that we have at hand is going to continue. Once the spotlight of CNN and the network news goes off Ohio, Kentucky, and Indiana and goes off the river communities, the work is going to have to continue. We will have to be hanging in there and doing what we can.

I appreciate the prompt response of FEMA and the Federal officials who were in Ohio yesterday, traveling with Lt. Gov. Nancy Hollister. I appreciate their prompt response and prompt recommendations to the President. I look forward to working with them, as well as working with the local communities, in the weeks and, frankly, months ahead.

We are seeing not only a tremendous amount of damage, in the millions of dollars, to homes, trailers, people having to be relocated, but we are also seeing an immense damage to the infrastructure of the southern part of the State of Ohio. I don't think any of us know what this is going to amount to. We won't know until the river goes back and things begin to get back to normal before we can assess the full damage. When you look at some of the counties in southern Ohio, there is not a one of them that has the capacity to respond, as far as dollars are concerned. This is something that cannot be budgeted. We, of course, will be looking forward to working with FEMA and other agencies to get assistance in there to those counties.

HAITI

Mr. DEWINE. Mr. President, I had intended to come to the floor today and talk about Haiti, a long way from Ohio. I have had the opportunity to visit Haiti three times in the last 18 months. I have had the opportunity to meet with our Ambassador, to meet with President Preval in Haiti, to meet with our members of the Armed Forces that we still have in Haiti, doing an absolutely fantastic job. One of the nice things about having the opportunity to travel to other countries and to see what is going on is the opportunity to see U.S. troops and to see the tremendous job that they do. It is just one more inspiring thing a Member of Congress can do.

As I said, I intended to come to the floor today and talk about what I

think is important in regard to Haiti. We have invested $2 billion. We have risked U.S. servicemen's lives. We still have United States service men and women in Haiti. Haiti is our neighbor. What happens in Haiti will impact us. Haiti is not of strategic importance to the United States, but Haiti, because of geography, because of historical ties, will continue to have an impact on the United States.

If we want to search for examples to prove this theory, we don't have to think back too far in recent history when we had thousands of Haitian boat people coming across the sea, and we were faced with the horrible decision of what do we do with them—people who were seeking freedom, people who were seeking the opportunity to simply provide food for their families, and we had to deal with that.

So Haiti, because of its geography, is very important to the United States, will continue to be important, and I intend to come to the floor sometime within the next week to detail what I found on the trips I have made to Haiti and some of the specific recommendations I have. But because of the constraints of time, and I know there are other Members who have expressed a desire to speak, I will, Mr. President, yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. First, while my friend from Ohio is here, I thank him for yielding before. I appreciate that.

USE OF FBI BACKGROUND INVESTIGATION SUMMARIES

Mr. LEVIN. Mr. President, I want to take a few moments this afternoon to set the record straight on an important point concerning the use of FBI background investigations in the consideration of the executive branch nominees by the Senate.

A number of inaccurate comments have been made about the handling of FBI files in connection with the pending nomination of Tony Lake to be Director of Central Intelligence. Some Senators are calling for access to the complete files which the FBI used to prepare the summaries that were provided to the White House and the Congress. The Senators cite former Senator Tower's nomination to be Secretary of Defense as a precedent for requesting those so-called complete files.

For example, a February 17, 1997, letter to the majority leader, signed by 16 Senators, only three of whom were Members of the Senate at the time the Tower nomination was considered, and none of whom were then members of the Armed Services Committee, states the following:

As you know, when former U.S. Senator John Tower was nominated for Secretary of Defense, his complete FBI file was placed in a secure room of the Capitol for Members of the Senate to read and evaluate. Given the clear precedent and the critical nature of the position of Director of Central Intelligence, this is the procedure which we believe should be followed in the case of Mr. Lake.

The fact is, Mr. President, that neither the Armed Services Committee nor the full Senate ever had access to the raw investigative files used by the FBI to compile its summary of the background investigation of Senator Tower. The Armed Services Committee and all Senators had access only to the FBI summary of its investigation of Senator Tower to be Secretary of Defense.

I understand that the summary of the FBI's background investigation of Tony Lake has already been provided to the chairman and vice chairman of the Intelligence Committee, just as the summary of the FBI's background investigation of Senator Tower was provided in the Armed Services Committee in 1989.

A little background is useful here on the process of FBI background investigations of executive branch nominees. Prior to the submission of a nomination to the Senate, the FBI conducts a background investigation of the nominee for the purpose of providing the President with information about the suitability of a prospective nominee. The report of the investigation is submitted to the counsel to the President who is responsible for preparing appropriate advice to the President.

The FBI background material provided to the Armed Services Committee in connection with nominations includes only the FBI summary of its interviews. If the committee determines that additional information is necessary, a request for this information is made of the White House. If necessary, the FBI investigates further, and additional summaries are provided to the committee. The underlying investigative materials are not submitted to the committee, and they never have been. I repeat that. The underlying investigative materials, the so-called raw investigative materials, are not submitted to the Armed Services Committee and they never have been, including in the case of Senator Tower when his nomination was before us to be Secretary of Defense.

The standard practice before the Armed Services Committee has been that the summary of the FBI investigation is read only by the chairman and the ranking minority member of the committee or their Senator-designee from the members of the committee. These summaries can be extraordinarily personal and confidential, and, for that reason, the executive branch is not allowed staff access generally to those FBI summaries.

A February 10, 1989, letter from President Bush's White House counsel, Boyden Gray, to the Senate majority leader described the "terms and conditions under which summaries of FBI background investigations on Presidential nominees have been made available to Senators since 1981." This is what then-White House counsel Boyden Gray said to the Senate majority leader.

The FBI summary is hand-carried by an attorney in this office to the Senator who reviews the file with the White House attorney. When the Senator has finished reading the summary, it is hand-carried back to the White House.

That same practice was followed throughout the Bush administration and the first term of the Clinton administration.

Access to FBI summaries was expanded for the committee's consideration of the nomination of former Senator Tower to be Secretary of Defense in 1989. For the committee's consideration of that nomination, Senator Nunn and Senator WARNER, the chairman and ranking member of the committee at that time, felt that it was important that all Senators on the committee have access to the FBI summary of its background investigation of Senator Tower and that a limited number of committee staff also have access to those summaries to prepare the committee report on the nomination.

After lengthy discussions and negotiations with President Bush's counsel, Boyden Gray, Senators Nunn and WARNER and Mr. Gray reached a written agreement on the terms of access to the FBI summary of its investigation of Senator Tower, which allowed all members of the Armed Services Committee and a very limited number of committee staff to have access to the nine chapters of the FBI summary. The summary was put in room S407 here in the Capitol, along with summaries of the summary which were prepared by the committee staff, to make it easier for the members of the committee to review those summaries.

Mr. President, the agreement between Senator Nunn, Senator WARNER, and Mr. Gray makes it very clear that what the Armed Services Committee had access to was—and here I am quoting from the access agreement—"the Federal Bureau of Investigation's summary of its background investigation of Senator John Tower."

And the agreement here between Senators Nunn and WARNER and Mr. Gray went on to inventory the material which was provided to the committee as follows:

The FBI summary consists of the following parts:

This is the inventory agreed upon relative to Senator Tower's nomination.

The FBI summary consists of the following parts: (1) summary memorandum (undated [but which was, in fact, dated December 13, 1988]); (2) summary memorandum (December 23, 1988); (3) summary memorandum [which was also] (undated [in this agreement but which was January 6, 1989]); (4) summary memorandum (January 13, 1989); (5) summary memorandum (undated [but which was, in fact, January 25, 1989]); (6) summary memorandum [dated] (February 8, 1989); and (7) summary of the ongoing investigation not yet completed by the FBI.

Now what that quote is from is the agreement between Senators Nunn and WARNER and Boyden Gray, the then-White House counsel.

Mr. President, I wonder how much time I have left?

The PRESIDING OFFICER. The Chair observes that the Senator's time has expired.

Mr. LEVIN. If there is nobody else seeking recognition, I ask unanimous consent to have 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I thank the Chair.

So then I observe, Mr. President, that the quote which I just shared with this body is from the agreement, and every single item on that inventory is a summary document.

Two additional FBI summaries were added to the seven listed in the original agreement before the Senate finally voted on the Tower nomination a month later. These FBI summaries, which were eventually placed in S–407 for review by all Senators, were the only FBI materials received by the Armed Services Committee.

As Senator Nunn stated on the Senate floor when he opened the debate on the Tower nomination—and this probably is the most succinct place where Senator Nunn stated this on the Senate floor—

What we have in S–407 is the summary of interviews the FBI conducted. They prepare the summary. We do not see nor do we have the underlying interviews.

That is stated about as succinctly and directly as you can by the then-chairman of the Armed Services Committee.

So, in short, the committee did not have access to any raw investigative files or interview transcripts, nor did the Senate. What we had were the nine chapters of the FBI summary of its investigation.

Following the committee's action on the Tower nomination, Senators Mitchell and Dole reached an agreement with the Bush administration that all Senators would have access to the same FBI summary of the background investigation of Senator Tower that was made available to the members of the Armed Services Committee. In other words, after the Armed Services Committee voted, then the agreement between Senators Mitchell and Dole was that the full Senate would have access to those same summaries that the committee Senators had access to.

So the fact is, Mr. President, that in considering the nomination of Senator Tower to be Secretary of Defense, the Armed Services Committee—and eventually all Senators—had access to the FBI summary of its background investigation of Senator Tower, no more and no less. We did not have access to any of the raw investigative material that the FBI used to prepare those summaries.

Mr. President, the Senate has had the nomination of Tony Lake to be Director of Central Intelligence for 2 months. And some Senators have questions about Mr. Lake's suitability for the position. Those questions should be raised with the nominee in the hearing next week so that he can respond, and Senators can then reach their own judgments about his suitability for this important position.

But we should not act on any misunderstanding as to what the precedents are relative to raw investigatory materials. And in dealing with the Lake nomination, which I am glad to see is now scheduled for a hearing, I think it is important that Senators realize that the precedents here relative to executive nominees are such that we do not have access to those materials because they contain so much rumor, so much inaccurate information that we rely on the FBI to go through all that raw material and give us the summary reports that then we rely on, and then if we need or desire additional information, we make that request of the FBI and of the Justice Department.

There is a larger issue at stake here also, Mr. President, and that is the growing intrusiveness of the nomination and confirmation process. Make no mistake about it: if the executive branch agrees to provide raw FBI files to the Intelligence Committee, a new precedent will be set for future nominations to executive branch positions. The FBI summaries contain the most personal, private, and sensitive details of an individual's life. Some of these details have no bearing on an individual's suitability for office.

As Mr. Gray stated in his February 14, 1989, letter to the Armed Services Committee, even the material included in the summary of an FBI background investigation is so sensitive that their disclosure could jeopardize "the privacy interests of [the nominee] and others, the confidentiality of FBI sources, the FBI's ability to conduct background investigations, and our ability to recruit qualified candidates for positions of governmental service."

It is already difficult to convince talented people to serve in government. If people realize that every rumor or allegation that the FBI dredges up or that every off-hand comment or statement that someone says about a nominee in an interview is subject to being read by 100 Senators and selected staff—and possible leaks to the media—it will be even harder to get the kind of people all of us want to serve in confirmed positions in the executive branch.

I ask unanimous consent, Mr. President, that the February 10, 1989, letter from Mr. Gray to the Senate majority leader, the February 14, 1989, agreement on the terms of access to the FBI summary of its investigation of Senator Tower, and the February 14, 1989, letter from Mr. Gray transmitting that agreement to Senator Nunn, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, February 10, 1989.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. MAJORITY LEADER: As a follow-up to our meeting of January 27, 1989, I am sending you a precise description of the terms and conditions under which summaries of FBI background investigations on Presidential nominees have been made available to Senators since 1981. That description is set forth below.

At the request of the White House, the FBI conducts a full-field investigation of a candidate for Presidential nomination. A summary of the results of this investigation is reviewed by the Counsel to the President prior to a final Presidential decision to nominate the individual in question. Once the nomination is forwarded to the Senate, that summary is made available for review by the Chairman and Ranking Minority Member of the Committee considering the nomination (and the Majority and Minority Leaders if they desire). With the approval of the Chairman and Ranking Minority Member, other Senators on the Committee are given an opportunity to review the summary.

The FBI summary is hand-carried by an attorney in this office to the Senator who reviews the file with the White House attorney. When the Senator has finished reading the summary, it is hand-carried back to the White House. (Within the White House, access to the FBI summary is limited to members of the White House Counsel's office, the Chief of Staff, and the President.)

In the event the Chairman and Ranking Minority Member of the Committee believe there are issues that have not been adequately addressed in the FBI summary, the Counsel to the President may request the FBI to conduct further investigation. The summary of that additional investigation is provided to the White House counsel who then makes it available to the Chairman and Ranking Minority Member on the same terms and conditions as the original FBI summary.

The procedures outlined above are necessary to protect the FBI's investigatory process as well as the privacy interests of the nominee and the other individuals who agree to be interviewed by the FBI. Since the FBI relies on the willingness of people to provide information in a confidential manner, access to this information is limited. For the same reasons, members of this office and Senators have historically refused to

comment publicly on the contents of the FBI summary.

As we discussed, this practice enables the Senate to utilize information prepared by the FBI for the White House in the execution of its Constitutional advice and consent responsibilities. Further, it is my understanding (as evidenced in the enclosed letter from former Deputy Counsel to the President Richard A. Hauser, Section IV of the enclosed old "Presidential Appointee's Handbook" (which has been used since at least 1986) and Appendix A of the revised "Presidential Appointee's Handbook") that this practice was consistently followed by Senate Committees in their consideration of Presidential nominees between 1981 through mid 1986.* Accordingly, with your concurrence, it is my intention to continue this practice throughout the Bush Administration.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

TERMS OF ACCESS TO THE FBI SUMMARY OF ITS INVESTIGATION OF JOHN TOWER (NOMINATION AS SECRETARY OF DEFENSE)

The Counsel to the President has agreed to make available to the Senate Armed Services Committee (SASC) four copies of the Federal Bureau of Investigation's summary of its background investigation of Senator John Tower. (The FBI summary consists of the following parts: (1) summary memorandum (undated [December 13, 1988]); (2) summary memorandum (December 23, 1988); (3) summary memorandum (undated [January 6, 1989]); (4) summary memorandum (January 13, 1989); (5) summary memorandum (undated [January 25, 1989]); (6) summary memorandum (February 8, 1989); and (7) summary of the ongoing investigation not yet completed by the FBI.) Since these documents are the property of the Executive branch and involve extremely sensitive information, they will be made available only through the Office of Senate Security located at Room S–407, United States Capitol. Only Senators on the SASC and not more than 6 designated SASC staff members (as determined and designated by the Chairman, SASC, and the Ranking Minority Member) and designated members of the Executive branch shall be granted access to these documents at this location. The names of the designated staff members shall be provided, in writing, to the Counsel to the President prior to their being given access to the documents; and the names of the Executive branch officials shall be provided, in writing, to the Chairman, SASC, prior to their access at this location. A record of all persons using these documents in Room S–407 shall be maintained.

Access to these documents will be limited to Senators on the SASC and the 6 designated SASC staff members. These documents may be reviewed in Room S–407 only; no additional copies may be made; and no documents may be removed. Any notes derived from these documents shall be treated as sensitive and shall be used only in connection with the Committee's Executive Session deliberations (and vote). At the conclusion of the Committee's deliberations (and vote), any notes shall be destroyed or considered part of the FBI documents for purposes of this Agreement.

Within 14 days of the conclusion of the Committee's deliberations (and vote) on Senator Tower's nomination, these documents will be returned to the Counsel to the President unless another agreement has been reached with the Senate leadership.

SAM NUNN,
Chairman, Senate Armed Services Committee.
JOHN WARNER,
Ranking Minority Member.
C. BOYDEN GRAY,
Counsel to the President.

THE WHITE HOUSE,
Washington, DC, February 14, 1989.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: With respect to our conversation last Friday regarding access by the Senate Armed Services Committee to the Federal Bureau of Investigation's (FBI) summary of its background investigation of Senator Tower in connection with his nomination as Secretary of Defense, I am gratified that we have now reached an understanding on the way in which we will proceed.

I believe the fact that all of the Committee's subsequent deliberations involving the FBI summary on Senator Tower's nomination will occur during Executive Session only, that this nomination has significant national security implications, and the unique nature of the allegations concerning Senator Tower warrant a one-time-only exception to the procedures governing access to FBI background investigations by Committee members.

The documents we will provide are extremely sensitive. Their disclosure could jeopardize the privacy interests of Senator Tower and others, the confidentiality of FBI sources, the FBI's ability to conduct background investigations, and our ability to recruit qualified candidates for positions of governmental service. Therefore, I am pleased that we have agreed on ground rules for Committee access that suit our purposes and yours. The enclosed Terms of Access sets forth the procedures for access, custody, storage, and return to the Executive branch of the FBI background summary. With this understanding, we are prepared to deliver copies of these documents to your Committee immediately.

I believe that this understanding will make it possible for the Committee to proceed expeditiously on this nomination once the FBI has completed its investigation.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAIVING CERTAIN PROVISIONS OF THE TRADE ACT RELATING TO THE APPOINTMENT OF THE U.S. TRADE REPRESENTATIVE

The PRESIDING OFFICER (Mr. GREGG). Under the previous order, the clerk will report Senate Joint Resolution 5.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 5) waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I believe under the unanimous-consent agreement the amendment by Senator HOLLINGS is in order at this time.

The PRESIDING OFFICER. The Senator is correct. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as I understand, the pending business is that I send to the desk an amendment to the waiver amendment of the committee; is that at the desk?

The PRESIDING OFFICER. The Chair would observe that the desk does not have the amendment.

Mr. MCCAIN. The waiver amendment is the pending business. What is not at the desk is the amendment of the Senator from South Carolina to the waiver.

The PRESIDING OFFICER. The observation by the Senator from Arizona is correct.

AMENDMENT NO. 19

(Purpose: To require Congressional approval before any international trade agreement that has the effect of amending or repealing statutory law of the United States law can be implemented in the United States)

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 19.

On page 2, after line 8, insert the following:

SEC. 2. CONGRESSIONAL APPROVAL OF CERTAIN TRADE AGREEMENTS REQUIRED.

No international trade agreement which would in effect amend or repeal statutory law of the United States law may be implemented by or in the United States until the agreement is approved by the Congress.

The PRESIDING OFFICER. The Chair announces there are 3 hours equally divided on the amendment by the Senator from South Carolina.

The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair. Mr. President, I ask that the distinguished senior Senator from North Carolina [Mr. HELMS] be added also as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

*The one exception to this rule was the Senate Judiciary Committee, which was subject to a separate agreement because judgeships are lifetime appointments.

Mr. HOLLINGS. Mr. President, the amendment that has just been read is so simple, so fundamental. I am hearkening to our new Members of the U.S. Senate, just in January, a few weeks ago, "I hereby pledge to support and defend the Constitution of the United States."

This is constitutional language, that no international agreement that would, in effect, amend or repeal statutory law can be implemented until approved by the Congress. Under the Constitution, article 1, section 8, it is the duty of the Congress to regulate foreign commerce—not the executive branch; not the executive branch.

Obviously, to really change the law you would have to have three readings in the House and three readings in the Senate and signed by the President. The fact that this amendment, which I tried to make as clearcut and as principled as it possibly could be, where there would be no confusion, has been so vigorously opposed by the White House and certain ones in Congress that there is no doubt in my mind that with respect to foreign trade, with respect to global competition, we are in the hands of the Philistines, we are in the hands of the multinationals. Rather than the Congress controlling the multinationals and international trade, the multinationals, by this initiative, are controlling the Congress.

What is the initiative? Well, they could not find any language to amend my amendment. They could not find anybody to really object to it. What they did do, then, was to say, well, we will get some letters written—incidentally, by people who had nothing to do with this particular part of the telecommunications bill—and the comments were that Mr. ARCHER of the Ways and Means Committee over on the House side then sends a letter on the one hand, saying that he would blue slip this particular appointment of Barshefsky in that the Hollings amendment would involve revenues.

You know that is not going to happen. I think they made some bad mistakes over on that side. I think they have sort of redeemed themselves from the contract. They certainly have redeemed themselves from three budgets. In 1995, they said the President was inconsequential and that they had three budgets, and whether you agreed or not, that is what they were going to do. Now they say, Mr. President, "Please give us a second budget." They do not even give one, much less three. But I do not think they would revert back to nonsensical conduct and try to act like an appointment to be confirmed by the U.S. Senate wherein it had a rider that the law be obeyed, the Constitution be supported and defended. "Protect and defend" is the oath we take, and that involves revenues. But be that as it may, Mr. President, that is exactly what they have done. And more recently, they have come by—and I have been vitally interested—and one of the ambassadors in the United States Trade Representative's office was to be appointed ambassador in charge of trade there at Geneva—we have written letters and made calls to the White House—Ms. Rita Hayes. Now we have calls in, indirectly, that that can't be had or done. I think it was about to be approved—"unless HOLLINGS gives up his amendment."

So they have tried every shenanigan in the world, which tells me—and should tell this Congress—that the executive branch is going to make its agreements, come hell or high water, and they could care less. Not a treaty, but just executive agreements. The media and everybody is supposed to go along and say, well, I think the Senator is right, but we have to go ahead with this appointment. They are changing the law. They admire the three readings in the House and the three readings in the House with respect to Ms. Barshefsky. She does not previously qualify having registered British Steel and foreign competitors. They passed that waiver out, and it no doubt will be adopted here in the U.S. Senate, but to just say "provided further, that if she enters into an agreement that would amend or change statutory law, that before it be implemented, it first must be approved by Congress." Just as simple as that.

So let's get right to the "meat of the coconut," as they say, because this has been going on for 2 years. This isn't any last minute—one of the letters from one Senator said this is a last-minute attempt. Oh, no, this isn't last minute. We had hearings on foreign ownership of telecommunications. We have had testimony of the different entities. Mr. Reed Hunt, the Chairman of the Federal Communications Commission, who was at one time conspiring for this particular approach—I don't know where he is now, but I am checking him. I quote Mr. Hunt:

> I am concerned about the prospects of foreign monopolies being able to buy into our markets while they are still monopolizing their home markets. And as global media developments occur, as the Congressmen mentioned earlier, we must be attentive to the fact that if a foreign company is a monopolist in its own country, it has a prospect of using that monopoly to leverage unfair competition into this country. I am concerned about that.

That is in May 1995, almost 2 years ago.

Mr. President, we also have the statement of the FBI and the DEA, who wrote, also, in May 1995:

> Even with the foreign corporation as privately held, we believe that a foreign-based company could be susceptible to the influence and directives of its own government. There are numerous examples of foreign companies being used and directed by their governments to carry out, or assist in carrying out, government intelligence efforts against the United States Government and all major corporations.

That is a letter to the Honorable JOHN D. DINGELL, on May 24 1995, by the Director of the Federal Bureau of Investigation, Judge Louis J. Freeh, and the Administrator of the Drug Enforcement Administration, Thomas A. Constantine.

Mr. President, the law that we are talking about, and the two sections—section 310(a) of the statutory law of communications—"The station license required under this act shall not be granted to or held by any foreign government or the representative thereof." Section 310(b) limits any owning or controlling interest to 25 percent.

Now, I understand somebody is going to say the special trade representative never testified. We had numerous meetings. You have to know how the executive branch works. We haven't had any hearings from them once they got the agreement here in February, just last month—any hearings on the agreement, or anything else of that kind. They just gave away 100 percent in violation of 310(a). They didn't just do the 25 percent in 310(b). They go in, as naive as get out, I can tell you that. I want to build a bridge back to the old-fashioned Yankee trader. Come in and say, look, we have the largest and the richest market; what can you come up with? Let's see what you propose and we will work with it. Instead, like goody-goody two shoes, this touchy-feely crowd that we have up here in Washington says, "We will give you 100 percent and let's see what you come up with." Nippon Telephone & Telegraph says, "Thank you for the 100 percent, bug off, you get nothing from us." And you go down the list. No country gave us any kind of 50-percent ownership. Our best of allies and friends in international trade, Canada and Mexico, in NAFTA, said, "No, you can't get a 50-percent." Under 50 percent. So you can see what a spurious approach they used, in violation of the law.

So I talked to Ambassador Kantor at that particular time, back in 1995, and Senator BYRD wrote a letter on April 3, 1995. And, again, Ambassador Kantor, the United States Trade Representative, came forward with his letter and acknowledged the law. I think that is the important part, because in his letter back to Senator BYRD on April 24, 1995—I am trying to congeal it so everybody understands it—I ask unanimous consent that this letter from Michael Kantor, dated April 24, 1995, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

APRIL 3, *1995*.

Ambassador MICKEY KANTOR,
U.S. Trade Representative,
Washington, DC.

DEAR MR. AMBASSADOR: The Senate will soon take up S. 652, the Telecommunications Competition and Deregulation Act of 1995, to promote competition in the telecommunications industry. I am writing to solicit your

views on the revision of foreign ownership provisions, specifically the revision of Section 310(b) of the 1934 Communications Act.

As you may know, the Commerce Committee's reported bill would allow the FCC to waive current statutory limits on foreign investment in U.S. telecommunications services if the FCC finds that there are "equivalent market opportunities" for U.S. companies and citizens in the foreign country where the investor or corporation is situated.

I would like to have your assessment of the impact of this provision for both enhancing the prospects of U.S. penetration of foreign markets, and for foreign investment in American telecommunications companies and systems.

Specifically, what impacts and advantages can we anticipate will result from enactment of this provision on the ongoing negotiations in Geneva on Telecommunications which has been established under the GATT, to be incorporated into the General Agreement on Trade in Services?

Second, which markets in Asia and Europe are now closed to U.S. telecommunications services in such a way that action on the basis of the concept of Reciprocity in the Senate bill is likely? What timeframes for such action, if any, would you contemplate?

Third, what has been the position of nations whose markets are closed to U.S. telecommunications services in the way of justifying their lack of access, and what likely reactions can we anticipate from those nations as a result of this legislative provisions?

What role do you think can be most usefully played by your office in effectively implementing the provision that has been recommended?

Lastly, in analyzing the legislation reported from the Senate Commerce Committee, do you have any suggestions as to how the provision might be strengthened to better serve the goal of opening foreign markets to U.S. telecommunications services and products?

Thank you for your attention to this matter.

Sincerely,

ROBERT C. BYRD.

Mr. HOLLINGS. I will just read one line:

By amending the legislation as we suggest, the Congress would provide effective market opening authority for both multilateral and bilateral negotiations on basic telecommunications services.

I emphasize the phrase "by amending the legislation as we suggest," because you got the U.S. Trade Representative Barshefsky, she says, "You don't have to amend it now. I got agreement. Take it and like it or else." But that isn't what the U.S. Trade Representative said in 1995. We heard about this. So on April 25, we wrote a letter—the distinguished majority leader, Senator TRENT LOTT, the distinguished Senator from Texas, KAY BAILEY HUTCHISON, the distinguished Senator from Hawaii, DANIEL K. INOUYE, and myself.

I ask unanimous consent that this letter to the President on April 25, 1996, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,

Washington, DC, April 25, 1996.

Hon. WILLIAM J. CLINTON,
The President,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our concern with the current negotiations governing trade in telecommunications services. The United States has an open and competitive market for telecommunications services. U.S. companies are the most innovative in the world. Current negotiations should not result in an agreement that unilaterally opens the United States market while barriers, both formal and informal, continue to keep U.S. companies out of foreign markets.

We are deeply concerned about the effects of any trade agreement, including a review by a dispute settlement panel of the World Trade Organization (WTO), on the independence and integrity of the Federal Communications Commission (FCC). Congress did not make any changes to the foreign ownership limitations of the Communications Act when it enacted the Telecommunications Act of 1996 (P.L. 104–104).

We believe strongly that the public interest test contained in the Communications Act of 1934, as amended, must be retained and that current practices governing foreign investment not be altered. Any change in current U.S. law and FCC practices as a result of any trade agreement should be done only with the approval of the Congress in accordance with our Constitutional obligation to regulate foreign commerce.

With kindest regards,

Sincerely,

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
TRENT LOTT,
KAY BAILEY HUTCHISON.

Mr. HOLLINGS. Mr. President, we cite thereon the independence and integrity of the Federal Communications Commission. "Congress did not make any changes to the foreign ownership limitations of the Communications Act when it enacted the Telecommunications Act of 1996."

What really occurred was, on the Senate side, we said, fine, we will go along on a majority percentage of ownership by a foreign entity if there is reciprocity. If there is an equal opportunity for U.S. companies to own and control, we will let them own and control, under certain circumstances, with, of course, Judge Freeh's and Mr. Constantine's inhibitions, and we had the same concerns. We would study them and go over them very closely. We had reciprocity with the snapback provision. I authored it. We put it in the bill after hearings and said, look, if the country changes its mind or comes under improper control and they kick us out, snap back, kick them out. Fair is fair. We thought that very reasonable to move an agreement on the international telecommunications. But the representatives of the White House, in particular the Special Trade Representative, now called U.S. Trade Representative, started dealing with Mr. OXLEY on the House side. And we were in the conference.

So all during 1996 in that particular conference, we worked around and we worked around. Finally, in December, I talked to our friend Mickey Kantor, the Ambassador. I said, "Mickey, we can't get together on this one. There is not going to be any change. Whatever agreement you make will just have to come back. Maybe that is the way. If you want some change in the law, then come on back to Congress."

We have debated it already now for 3 years. We would be glad to get together on it. But with all the facets of the upgrading and the revision of the 1934 telecommunications act and considering all the various decisions made over a 60-year period, we couldn't agree.

So Ambassador Kantor said, fine, that is what they would do. However, in the early part of the year when we came back—again negotiating all during 1996—to the Congress just a couple of months ago, we kept hearing again that we were somehow going to be ignored and that they were making offers over there.

Mr. President, on February 4, 1997—again Senators ROBERT BYRD, BYRON DORGAN, DANIEL INOUYE, and FRITZ HOLLINGS—the four of us joined in a letter to the White House saying that the USTR should not commit the United States to a trade agreement that limits the scope of the public interest test administered by the FCC, and any changes to current U.S. law should be done only with the approval of the Congress.

So it was clear in January and February, long before they made the agreement, that we were watching closely as best we could. I met on January 17 with Ambassador Barshefksy. I want it clearly understood that at that particular time we meant exactly what we said. I cautioned her. It was on January 17. I had already met. That is why we sent that February letter. When I met with Ambassador Barshefksy, it was crystal clear to this Senator. I have been up here 30 years. I am the senior junior Senator. And my friend STROM says, "You had better get used to it." But I dealt with these trade representatives way back into the 1950's, 40 years ago. I have handled clients as a practicing lawyer, when the individual continues to not answer the question and is sort of hugging up to you and says, "I want to work with you, I want to work with you, I want to work with you." I said to Ambassador Barshefksy, "Madam, I do not want you to work with me. I want you to work with that statute. Don't go over and say you did not know anything about it because we have been in the debate, and you are going to have many Members really turned off on this one, and we will have to take action." But it was quite apparent to me with that "I want to work with you" stuff that she had no idea of working

with us in good faith. Of course, now we know.

As reported in the Journal of Commerce on February 19, 1997:

> The United States decision to end its statutory restrictions on foreign investment in this sector was crucial to carrying along a global deal in which the rest of the world has made varying levels of commitment to similarly open their markets.

So, to end the statutory restrictions, we have not extended the statutory restrictions. Nothing has been happening. There has not been three readings in the House nor three in the Senate. We haven't even debated it here this year. But they already have the trade press quoting exactly what the public official of the U.S. Government is saying. Here we are all in the uproar. We have the special committees, the independent prosecutors, "Get them, get them, foreign influence on policy. We can't have anybody give us a contribution and influence policy." And over here, while we are not looking, a public official of the U.S. Government is giving it away in violation of section 310(a) and 310(b) of the communications act. So, yes, I talked to Members. I said, "I just want to make it crystal clear that either we are going to go to conference"—like our lawyer friend Sullivan, who said, "I am not a potted plant"—"or else we will let the executive pass its own little laws, and we can go on home and forget about trying to work up here to set some valid policy."

So thereby is the amendment.

Mr. President, it is interesting. I must report to you that even while Ms. Barshefsky couldn't get it, I read that the Canadian official reported in the Wall Street Journal—and, I quote again, prior to the amendment—"We think that when you look at the overall package, our offer is every bit as good as the American offer." However, Canada "has serious reservations about the United States proposal because it won't be backed by U.S. legislation." At least the trade negotiator from Canada got my message. I never have talked to that individual. But I can tell you now, we could not get through. We couldn't get through at all.

You have to understand along this line, Mr. President, because you are from the hinterlands where people think straight, that you can tell why this crowd up here operates in the beltway and miasma totally of their own dreams. And when we as Senators go home—Oneita Mills, which just a couple of months ago closed down, was just not a complicated operation making T-shirts. But I got there some 35 years ago when I was Governor—and I am proud of it—in a little country town of Andrews, SC, and I got 487 employees, and Washington says, "Don't worry about it. What we need is retraining, retraining, retraining." The former Secretary of Labor, my friend Bobby Wright, that is all he thinks: Skills, skills, skills, retrain. We have skills coming out of our ears. We manufacture automobiles. They didn't go to Detroit. We never made one. But we have the skills, and we put in there a technical training system. I put it in. In 1961, we broke ground up there in Greenville on a garbage dump. I guess EPA would catch me now. But that is where the school is. And I broke ground for 16 others. We got the skills.

But back to Oneita, they said, "Retrain, retrain; get another job; we don't have enough skills. You don't understand the problem. We up here in Washington understand the problem." Nonsense. Assume that they retrain as computer operators; tomorrow morning you have 487 computer operators. The average age at Oneita was 47 years of age. Are you going to hire the 47-year-old computer operator or the 20- or 21-year-old? You are not going to assume the retirement costs and the health costs of the 47-year-old. They are out.

Yes, I see it when I look at that GE plant that I brought in from Brazil. In the competition they said, if you want to sell those transformers to us, you are going to have to move your plant. So when I brought one to South Carolina, they closed the plant down and GE is gone, moved offshore.

Malaysia, Baxter Medical. I brought that one in, but we are still giving tax incentives to invest overseas, so they closed down last year and they have gone to Malaysia. Saturday before last, Sara Lee in Hartsville, with 187 jobs, gone to Mexico.

We lost, in the year 1995, 10,000 textile jobs in South Carolina, and I think an equal amount this past year. I am trying to get the figure. When they talk about educate, educate, educate, educate here at the White House, they better buy a few books and read them themselves. They better get hold of "Looking at the Sun," by James Fallows, or "Blindside" by Eammon Fingelton or "The Future of Capitalism," by Les Thurow, or our friend Bill Greider, "One World, Ready or Not," and, of course, the most recent book by Robert Kuttner "Everything For Sale." You begin to sober up and understand what the head of Motorola, in Malaysia said as quoted by Mr. Greider that the people of America have no idea in the Lord's world what is happening to them.

What we are doing is making the exception the rule. And what is the exception? The exception is free trade, free trade, free trade. Adam Smith, market forces, market forces. After World War II, that was a valid contention. We had the dominant auto industry. We wanted to foster capitalism in the emerging Third World. We were looking for freedom and democracy to be spread into Europe and into the Pacific rim. So we taxed ourselves by billions for the Marshall Plan and thereupon coaxed our industries to invest overseas. And invest they have.

But if you want to see the sheep dog gobbling up the entire flock, you ought to watch these multinationals that we created. The nationals went over. They resisted it at first. They could not speak the language. The air flights were not good. They did not get good food on them or anything else of that kind. But gradually they learned that in manufacturing, 30 percent of volume is in labor cost—payroll. And you can save as much as 20 percent in a typical manufacturing entity by moving to a low-wage country. So it is that an entity, a manufacturing company that has $500 million in sales can keep its sales force, its executive office back here at the home headquarters but move its production, its manufacture to a low-wage country and make itself $100 million, or it can stay here, continue to work its own people and go broke.

That is what is going on. How do you get that through the news pages so they understand it?

So the nationals gradually became over the 50-year period since World War II, multinationals, and then the national banks, Chase Manhattan and Citicorp, as of 1973, made a majority of their profit outside the United States. So you have got the multinational corporations and the multinational banks. And thereupon you have them making their money and coming back in with the consultants and the takeover of all the think tanks and everything else.

I can bring you right up to date. They just established a chair at the Brookings Institute on free trade, and do you know who is financing it? Toyota. Toyota. So Brookings comes and says, this is great about free trade. Oh, sure, those multinationals, they joined up with the foreign countries. The foreign countries want to dump everything. The multinationals want to manufacture and dump everything back here.

Then, of course, the retailers. The retailers, we proved here in many a debate, do not lower their price. They make a bigger profit. So every time we bring up a reciprocal trade measure or try to get customs agents, which are needed because there is over $5 billion in transshipments in violation of our agreements, whenever we try to get that, the retailers are up here pigeonholing every Senator.

So you have the multinationals, the multinational banks, the consultants, the campuses, the think tanks, and then read "Agents of Influence," by Pat Choate, and that was back 7 years ago when Japan, one country, had a $113 million retainer of—I don't know how many law firms or whatever it was around here—representatives. I got up at that time the total salaries of all the House Members, 435, and all the Senators, 100. Of the 535, we were only

paying to have represented the people of America some $71 million. Japan was better represented in Washington at $113 million.

Read the book and you will see how these U.S. Trade Representatives, after putting in time here, went to represent the other side. That is why we have the waiver. Senator Dole said you cannot represent a foreign entity and then come in here and represent us. But, of course, the Finance Committee is in a fix, and there we are. There we are, in the hands of all the lawyers around here. There are 60,000 lawyers registered to practice in the District of Columbia. That is more lawyers than the entire country of Japan. And they come around here and they hate lawyers, they hate lawyers. They are all billable hours. Get yourself charged on an ethics charge and try to find one for less than $400 an hour. They have never been in the courtroom. They never tried a case. They come around here. They ought to all go to work for O.J. Fix that jury. Fix that Congress. That is what we have on us, and you cannot get a word for anybody to represent the reality of this global competition.

There are two schools—two schools of international trade. One, of course, is Adam Smith, the market forces, fostered by David Ricardo, comparative advantage, comparative advantage. But the other school, Friedrich List, which is almost top secret in this body: The strength and the wealth of a nation is measured not by what it can consume but by what it can produce. And that is the global competition. None of them have gone down the road of Adam Smith. They have all gone down the road of mixed economies, and that is what built the United States of America. That is what built this great economic giant, the U.S.A.

The earliest day after we had won our own freedom, the Brits corresponded back to our forefathers and they said, now, as a fledgling little colony here, you have gotten your freedom. You trade back with us what you produce best and we in Great Britain will trade back what we produce best—free trade, free trade, free trade. Alexander Hamilton wrote a book that there is one copy of under lock and key over here at the Library of Congress. I will not read the booklet. We have had a copy of it in my file. But in the line, Hamilton told the Brits, Bug off. We are not going to remain your colony. We are not going to ship our natural resources, our timber, our coal, our iron, our wheat, our farm stuffs, and you ship back the finished products. We are going to make ourselves economically strong. And the second bill that ever passed this U.S. Congress in its history—the first had to do with the seal of the United States—but on July 4, 1789, the second bill to pass this Congress was a tariff bill of 50 percent on 60 different articles. We started with protectionism, protectionism, protectionism.

Later, when we were going to build a transcontinental railroad, they told President Lincoln we could get the steel from England. He said, No, we are going to build our own steel mills. And when we are finished, we will not only have the transcontinental railroad, but we will have an industrial steel capacity.

Again, in the darkest days of the Depression, when people were in food lines, Franklin Roosevelt, with his Economic Recovery Act, put in—what?—put in subsidies for America's agriculture, payments to the farmers that continue today, and protective quotas. And therein is the wonderful success story of America's agriculture.

So, we say, "Preserve, protect, and defend." We have the Army to protect us from enemies without, the FBI to protect us from enemies within, we have Social Security to protect us from the ravages of old age, Medicare to protect us from ill-health—we can go right down the functions of Government. When it comes down to a competitive trade policy, we are in the hands of the Philistines, the multinationals. They are pulling our strings. They want fast track. They do not want any debate. They want to just pass the bills and, if you don't do it, we will make the agreement anyway and bag it. Bug off. That is what they are telling us. So we put in our amendment.

I have had long experience in this field. I testified during the 1950's. I came up here and testified before the old International Trade Commission, and Tom Dewey represented the Japanese. He chased me around the room for a couple of days, and he said, "Governor, what do you expect the Third World emerging countries to make? Let them make the shoes and the clothing, the textiles. And we, in turn, in the United States, we will make the computers and the airplanes."

Now, they do not realize it—yes, they are making the shoes: 89 percent of the shoes on the floor of this Congress are imported; two-thirds of the clothing in this Chamber is imported. They are making the shoes and the clothing, the textiles, but they are also making the cameras, the watches, the electronics, the machine tools. You can go right on down the list. And the computers and the airplanes—all of it.

Wake up, America. The majority of that Boeing 777 is made offshore, a good bit of it in China, the People's Republic of China. There are some of them who want to say Communist China, we are going to get a Communist China airplane to ride around in. That is how far we have come, but they do not want to admit to it.

So, there we are. What we have is a situation of the typical promises they make. I am prepared to get into those promises, Mr. President, but, perhaps, I see my distinguished colleagues have been very patient with me. I guess they would be glad to be heard at this time, so I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, under the unanimous-consent agreement, an hour has been provided for the chairman and ranking member of the Finance Committee for debate on the resolution. I will yield myself such time as I may take from that hour.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROTH. Mr. President, I rise to voice my strong support for Charlene Barshefsky as U.S. Trade Representative. Her nomination was favorably reported by a unanimous vote of the Finance Committee on Thursday, January 30, 1997. It is evident that the nomination of Ambassador Barshefsky has wide bipartisan support in the Senate. This is not surprising when one looks at the impressive record she has compiled as a trade negotiator at the Office of U.S. Trade Representative, first as Deputy USTR and then as acting USTR.

During her nearly 4 years at USTR, Ambassador Barshefsky has succeeded in negotiating an impressive list of multilateral and bilateral trade agreements aimed at opening foreign markets to U.S. exports. She has also distinguished herself as a vigorous advocate and defender of U.S. trade interests. For example, most recently, Ambassador Barshefsky concluded an important agreement on insurance with the Japanese—a matter I was actively involved in on behalf of the United States insurance industry. If this agreement is fully implemented by the Japanese Government, it should result in substantial new opportunities for United States insurance providers.

Similarly, at the World Trade Organization Ministerial in Singapore last December, Ambassador Barshefsky was successful in pushing other nations to conclude a landmark agreement to eliminate tariffs on information technology products. Once put into effect, this Information Technologies Agreement will result in billions of dollars in savings to U.S. companies and consumers.

However, Ambassador Barshefsky has also shown that she can reject bad agreements. She refused to enter into an agreement on trade in financial

services that could have left U.S. financial service providers in a worse position than before. Similarly, during the negotiations on telecommunications services last spring, she had the resolve to walk away from the table when other countries had presented patently insufficient offers to open their telecommunications markets.

Her hard-nosed stand in the telecommunications talks forced countries to make substantial improvements in their offers, and the result was a historic agreement reached on February 15 to liberalize trade in basic telecommunications services.

The Agreement on Trade in Basic Telecommunications Services will save consumers hundreds of billions of dollars and will allow our telecommunications industry to compete in foreign markets that were previously closed to them.

Given these accomplishments and her demonstrated toughness and resolve on behalf of U.S. interests, I think there is no question but that Ambassador Barshefsky is extraordinarily well qualified for the position as U.S. Trade Representative. Indeed, her achievements, negotiating skills and professionalism remind me of another able woman USTR, Carla Hills.

We enter a time when we greatly need as U.S. Trade Representative someone with the qualifications that Ambassador Barshefsky brings to the position. The next USTR will be called upon to manage a number of difficult trade issues, including the increasingly complicated trade relationship with China.

Specifically with respect to China, we face a ballooning trade deficit and increasing tensions on trade matters with that country. Moreover, we will soon enter again into the annual debate over whether China should continue to enjoy normal trade relations with the United States, at a time when congressional views on this question will be influenced by China's action during the reversion of Hong Kong to the People's Republic this July.

Ambassador Barshefsky will also be responsible for negotiating with China to ensure that it enters the World Trade Organization on commercially viable terms, which provide for meaningful market access and a commitment from the Chinese to observe the basic rules of the WTO.

In addition, Ambassador Barshefsky will be the administration's point person with respect to the difficult issue of renewal of fast-track negotiating authority. She will also carry the responsibility to ensure that the trade liberalization initiatives through the Free Trade Area of the Americas, the Asia Pacific Economic Cooperation Forum, and the Trans-Atlantic Marketplace proceed according to schedule.

These are all important issues, and I am most confident that they will be handled appropriately working with someone like Charlene Barshefsky.

I would like to comment on the issue of the Ambassador's work for the Government of Canada and the Province of Quebec while practicing law in the private sector.

Questions have arisen whether this work may fall within the terms of section 141(b)(3) of the Trade Act of 1974, as amended in 1995 by the Lobbying Disclosure Act.

That provision prohibits the President from appointing any person to serve as Deputy USTR or U.S. Trade Representative who has directly represented, aided, or advised a foreign government or foreign political party in a trade dispute or trade negotiation with the United States. In my opinion, the vagueness of this new law and the fact that there was no debate or legislative history on the provision when it was added to the Lobbying Disclosure Act, make it difficult to determine whether it covers or even should cover Ambassador Barshefsky's work in the private sector.

In order to resolve this matter, the President formally requested Congress to enact legislation waiving the law in this instance. Senator MOYNIHAN and I agreed that under these circumstances, a waiver was warranted and, therefore, we jointly introduced Senate Joint Resolution 5 to waive the prohibition.

For those who may have questions or concerns about this waiver, I want to point out that Congress has previously passed legislation to waive a statutory requirement on who may serve in a particular Government position with respect to a specific nominee. For example, in 1989, Congress passed a waiver of the law requiring that only a civilian may be appointed head of NASA, so that Rear Adm. Richard Harrison Truly could be appointed NASA Administrator. In 1991, Congress, once again, passed a waiver of the law requiring that only a civilian may be appointed head of the Federal Aviation Administration so that Maj. Gen. Jerry Ralph Curry could be appointed FAA Administrator.

I would also like to say specifically with respect to Ambassador Barshefsky that as Deputy USTR, she has been exempt from the prohibition in the Lobbying Disclosure Act. She has been forthcoming in providing information to the Committee on Finance about the nature of her work while in private practice.

Moreover, in response to a question from me at her nomination hearing, the Ambassador stated that she had never lobbied the U.S. Government on behalf of a foreign government or a foreign political party.

So under these circumstances, and in the interest of moving her nomination as expeditiously as possible, the entire Senate Committee on Finance agreed that a waiver was appropriate in this case and voted unanimously for the joint resolution. Therefore, I hope that all Members of the Senate will also agree that the waiver is in the best interest of confirming this nominee who clearly enjoys broad bipartisan support and has already demonstrated that she is eminently qualified to serve in that position.

Mr. President, I reserve the remainder of my time, and I yield the floor.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I rise, as is so frequently and pleasantly my lot in this Congress, to support entirely the major statement made by the chairman of the Committee on Finance, our revered BILL ROTH of Delaware.

As he stated just now, this proposal for a waiver, a very technical matter, a prudent matter, comes to the floor of the Senate as a unanimous action of the Committee on Finance. Just last week, we had a revenue measure which also came to the Senate with the unanimous agreement of the Finance Committee and was duly enacted and is now, in fact, law. The President signed that measure.

We are acting today at the request of the administration, which has a very proper principled concern that if there is any question about the application of this statute, then let that question be resolved by a waiver, which is what we are doing.

In the specific instance, Mr. President, as an attorney in practice here in Washington, Ambassador Barshefsky provided legal advice to the Government of Quebec on softwood lumber countervailing measures—I do not fully claim to understand that—and to the Government of Canada itself.

As the chairman has observed and noted—was she seeking to influence actions here in the Congress? She gave legal advice. I cannot but doubt that there are any number of solicitors in Ottawa who provide advice to American firms on trade matters between the United States and Canada. We, after all, have enjoyed a free trade agreement for nearly a decade and more and have been the closest economic partners for a century and more.

The capacities that Ambassador Barshefsky brings to this job are formidable to the point of being dazzling. She is a master of the subject and has a capacity for advocacy of the American position and American interests that is surely unequaled in our time. The chairman referred to one of her predecessors, Carla Hills, who was equally distinguished in this manner.

There has not been a more dramatic example of American diplomacy—because we are talking about relations between nations—at its finest. When the much-announced, much-proclaimed agreement on telecommunications last

year found the other nations unwilling to make the kind of reciprocal agreements that we required which were in our interest and where there were times when negotiators from any country, including our own, would settle for less than what might be appropriate in order to get an agreement, Ambassador Barshefsky did no such thing. Charlene Barshefsky did no such thing. She walked out of the conference, only to come back in the recent weeks with a triumphant telecommunications agreement of the very highest importance to this country.

She did it because she is a firm representative of the U.S. interests and can be someone of just a little hard edge when that seems important. Her arrival in a place like Singapore is front page news. I hope she would not mind that on certain Asian missions she is referred to as the "Dragon Lady," although she has disarming, personable qualities. She is a tough negotiator.

I make this point simply because there is one overriding issue upon us right now—as a trading nation, as the world's largest trading nation, and the sponsor of the World Trade Organization—and that is, as the chairman indicated, the terms on which the People's Republic of China will be granted admission to the World Trade Organization, the terms which are going to make it be the real test of that organization. And it will be decisive to its future.

It started well. It took a long time to get going. As the chairman knows, in the Dumbarton Oaks agreements that were reached with the United Kingdom at the end of World War II, we contemplated there would be three major international institutions: The International Bank for Reconstruction and Development, which we know as the World Bank; the International Monetary Fund; and the International Trade Organization—three international organizations, the latter to advance the reciprocal trade programs that had begun in 1934 under Cordell Hull and the administration of President Roosevelt after the calamity of the Smoot-Hawley tariff of 1930.

The World Bank was duly established. The International Monetary Fund was duly established. The International Trade Organization fell afoul, came to grief, if you will, in the Senate Finance Committee. And so it was a matter of some institutional satisfaction to the committee in the 103d Congress to report out the legislation in which we joined, as had been negotiated, the Uruguay Round, the World Trade Organization to succeed the General Agreement on Tariffs and Trade which had a much more limited, although indispensable, role in the period that followed our rejection of the ITO. And now we have the World Trade Organization.

The terms on which you enter this agreement and have membership in this organization require an economy and economic practices very much disparate, very much at a distance, if that is the correct term, from those practices and that economy which we observe in the People's Republic of China.

The terms on which entry can be negotiated are going to be complex and crucial. And we need a negotiator who can say no. The one thing Beijing needs to understand is that they will be across the table, or at a round table, in Geneva with a negotiator who can say "No, period." Other than that, I think prospects for a successful, perhaps staged, entry are good. It certainly should not be dismissed. But it must be understood we are not going to reach agreement for agreement's sake, and to that end we have confirmed in the U.S. Senate the appointment of a U.S. Trade Representative who can say, no—will do, has done.

So, Mr. President, I have the great honor to join with our chairman in this unanimous action of the Committee on Finance in reporting to the floor this proposal for a waiver just to be on the safe side of the legal question that might arise—and will not when we are finished today—and also, of course, the nomination of the Ambassador which will follow in executive session.

I see my colleague from Iowa is on the floor. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself 15 minutes from the time on our side.

The PRESIDING OFFICER. The Senator is recognized.

Mr. GRASSLEY. Mr. President, would you please notify me when I have used 14 minutes, because I want 1 minute on the Hollings issue as well.

Mr. President, I rise today to speak on the nomination of Ms. Charlene Barshefsky as United States Trade Representative. Ms. Barshefsky has served as acting USTR since April 1996. So we are all familiar with her work. I have personally worked with her and her staff on several issues in the past year. And I had the opportunity to watch her in Singapore, at the WTO ministerial, negotiate the Information Technology Agreement. Based on her job performance and her international reputation as a strong advocate for U.S. interests, I am prepared to support her nomination today.

Mr. President, the next 4 years will be crucial for U.S. trade policy. We are beginning our fourth year under the North American Free-Trade Agreement and third year under the World Trade Organization. The U.S. Trade Representative must closely monitor the implementation of these agreements to ensure they are working to open markets to American exports.

FAST-TRACK NEGOTIATIONS

The USTR will also serve as President Clinton's point person in several key negotiations. First, she will have to negotiate with Congress on fast track authority. As you know, Mr. President, fast track means that Congress grants to the administration its authority to negotiate trade agreements. Once an agreement is reached, it must be ratified by Congress within a specified period of time and is not subject to amendment.

Fast track is necessary because Congress, alone, has the constitutional authority to enter into trade agreements. But as a practical matter, other nations are reluctant to negotiate agreements with the President, that may later be modified by Congress. So I do believe it's necessary that Congress grant fast track authority to the President.

But fast track is a significant delegation of power. So its crucial that Congress carefully tailor this delegation in order to accomplish its goals. And it's important that the President, in carrying out this delegation, negotiate within the parameters of the authority granted to him.

Herein lies the problem. Congress and the President often have different ideas of what should be included in trade agreements. This administration has made it clear that they want the authority to negotiate on labor and environmental issues under the fast track process. But most of us Republicans don't believe that these issues should be part of trade agreements.

So Congress has not given the President fast track authority since 1994. And our foreign trading partners now doubt the desire of the United States to lead on trade issues. We are being left by the wayside. For example, after 3 years of NAFTA we are beginning to see very positive results. Through the third quarter of 1996, for instance, exports to Mexico just from my State of Iowa are up over 34 percent. The three NAFTA nations are now the world's largest trading bloc. And it's time to begin looking at expanding this free trade area to other nations in the Western Hemisphere.

But this cannot happen without fast track. So I implore Ms. Barshefsky to negotiate with Congress in good faith to achieve fast track. Let's put aside our partisan differences. And let's remember that trade is the focus of these agreements. The United States cannot continue to insist on addressing other issues within the context of trade agreements.

Issues such as environmental and labor standards are very important. But there are avenues other than trade agreements that ought to be pursued to influence the behavior of other countries. And the expansion of trade,

itself, with another country can be an effective inroad for making change.

So let trade agreements stand on their own. They are difficult enough to negotiate without taking on the weight of these other issues. I'll have more to say on fast track as negotiations progress with the administration.

CHINA'S ENTRY INTO THE WTO

Mr. President, I hope that Ms. Barshefsky does not have to spend all of her time negotiating with Congress. She also faces very critical negotiations on admitting China as a member of the World Trade Organization. These negotiations could affect the U.S. trade balance for decades. I am reminded of Japan's entry into the General Agreement on Tariffs and Trade in the 1950's. It seems that we are still paying for lowering the standards to let Japan into the GATT.

In the area of agriculture trade, which is very important to my State, these negotiations may determine whether China becomes our largest export market or our biggest competitor. The stakes are extremely high for American farmers.

That's why I'm concerned that some members of the Clinton administration want to let China into the WTO at any cost. So I took the liberty of asking both Secretary of State Albright and Ambassador Barshefsky about the terms of China's entry. I want to quote from their answers in order to get their opinions on the public record.

Secretary Albright said,

We have requested that China make significant commitments to liberalize its agricultural trading regime, including reforming its state trading system, making substantial tariff cuts, eliminating unjustified sanitary and phytosanitary measures, and binding its subsidy levels.

She also stated:

If China is to join the WTO, we will need to have a commercially acceptable protocol package of commitments by China to open its markets in-hand before we will agree to China's accession. That means real market access for U.S. goods and services, including agriculture.

Then I asked Ms. Barshefsky to comment on Secretary Albright's statements. She said,

I fully agree with the two above statements. China's WTO accession can only occur on commercially meaningful terms. And, just as you quote Secretary Albright, that means market access for our goods, services and agriculture to the fastest growing economy in the world.

Mr. President, I am pleased with the way that both Ambassador Barshefsky and Secretary of State Albright responded to my questions. I hope this will continue to be the policy of their agencies.

I understand that it is very important to integrate China into these multilateral organizations. I have always believed that we can encourage change in China more effectively if we engage them economically. But we cannot sacrifice the interests of American workers and farmers by allowing China to subsidy their industries while keeping their markets closed.

So I will continue to monitor very closely the ongoing negotiations with China. And I encourage Ms. Barshefsky to continue to take a hard line on this issue. I'm reminded of a meeting that I had with Ms. Barshefsky in Singapore when we were attending the WTO ministerial meeting. Since it was reported in the local press, I don't think I'm breaching any confidences by repeating it here in the Senate.

There was a meeting of the Quad nations, which is the United States, Canada, Japan, and the European Union, concerning China's entry into the WTO. The local Singapore newspaper reported that Minister Leon Brittan of the European Union argued that bringing China into the WTO was so important that conditions of entry should be relaxed. The Japanese minister disagreed very strongly with this position. And apparently Ms. Barshefsky concurred with the Japanese minister.

I repeat this incident just to point out that there are different views on this issue. Many nations will seek to treat China with "kids gloves." So it is crucial that the United States play a leadership role in assuring that our interests are protected.

NAFTA EXPANSION

A third area of negotiations that could be significant in the next 4 years is the expansion of the North American Free Trade Agreement. President Clinton promised back in 1992 that Chile would become a part of the NAFTA. But the lack of fast track authority has undermined this promise. Now, Chile has moved ahead and signed a free trade agreement with Canada. And they have also become an associate member of Mercosur.

This is a good example of what happens when Washington fails to lead. The rest of the world moves on without us. And the consequences are very real in terms of U.S. jobs and standard of living.

Let's just take Chile, for example. Chile has the potential to become a very important market for United States agricultural exports. Over the last 10 years, the Chilean economy has grown at an average rate of 6.5 percent and real per capita income is up 50 percent. And since 1984, poultry consumption has risen 60 percent, pork consumption over 45 percent and beef consumption over 30 percent.

The United States currently supplies most of the feed grain Chile uses to support their livestock production. But this market could be put in jeopardy. Chile is increasingly turning to neighboring countries with whom they have preferential trade agreements to supply agricultural products. So the United States' failure to lead on trade has a real impact in terms of lost markets and lost opportunities.

I also ask the President and Ms. Barshefsky to begin taking a hard look at other nations in the Western Hemisphere for NAFTA expansion. Brazil and Argentina have already moved ahead and formed their own customs union, the Mercosur, with Paraguay and Uruguay. And the economies of the Caribbean nations have been hard hit by the increased trade between Mexico and the United States So they would like to enjoy NAFTA status.

This administration needs to articulate its vision of how free trade should proceed in the Americas. Soon. Or it will be the United States who is left out in the cold.

AGRICULTURE

One last issue I would like to discuss, Mr. President, is agriculture. In his State of the Union Address, President Clinton mentioned that the United States is now exporting more goods and services than at any other time in its history. I am glad he did that, because those of us in Washington need to articulate the benefits of free trade. I was disappointed, however, that the President failed to acknowledge the contribution of agriculture, which is the "shining star" of our trade balance.

As most sectors continue to run trade deficits, our farmers continue to produce food that the entire world wants to buy; 1996 was another record year for agricultural exports, totaling over $60 billion. This resulted in a trade surplus in agriculture goods of $26.8 billion. Which is the largest surplus of any sector. Since our total trade in merchandise suffered a $187.6 billion deficit in 1996, agriculture is truly a shining star.

But that isn't to say we can't do better. The Uruguay Round agreement, ratified by Congress in 1994, was really the first step in opening up global trade for agriculture. That agreement not only lowered tariffs and quotas for ag products. It also addressed nontrade barriers, such as unjustified health and safety concerns.

The agreement's sanitary and phytosanitary provisions mandate the use of sound science when setting health and safety standards for imports. No longer is protectionist government policy or politics supposed to decide whether a certain product is allowed into a country. Sound, scientific standards must be used.

Not surprisingly, these provisions are the subject of several current disputes. The European Union's ban on U.S. beef and their failure to certify our meat packing plants for export are just two examples. And there are many more. The Clinton administration must vigorously enforce these important provisions with our trading partners. We can't continue to allow other nations to breach their trade agreements in order to keep out our agricultural goods.

The stakes have never been higher. Our farmers have become more dependent on world markets for their income. The revolutionary farm program enacted last year begins to lessen the Government's role in agriculture. The result is that, according to the U.S. Department of Agriculture, up to 31 percent of all farm income will come from foreign markets by the end of the decade. I don't know too many farmers who can afford to give up 31 percent of their income.

Beyond our current disputes, the next round of agricultural negotiations at the WTO are set to begin in 1999. Ms. Barshefsky will be a key player in these negotiations. That is why I was concerned about recent staffing decisions at the U.S. Trade Representative's office.

On the morning of Ms. Barshefsky's confirmation hearing at the Finance Committee, the Journal of Commerce ran a very disturbing article. The article pointed out that the top two agriculture staffers at USTR had been replaced with a political appointee with no agriculture experience.

I had a telephone conversation and an exchange of letters between Ms. Barshefsky. She is convinced that these decisions will make her office more responsive and effective on ag issues. So I am willing to defer to her judgment and her right to hire her own staff. I will, however, be overseeing her performance on these issues.

CONCLUSION

Mr. President, I have discussed several issues that I believe President Clinton and his nominee for USTR, Charlene Barshefsky, must lead on in the next 4 years. The last 2 years were a disappointment for those of us who believe in the benefits of international trade. The likes of Pat Buchanan and the AFL–CIO called the shots on trade for the 1996 Presidential candidates. The focus was on lost jobs and companies moving offshore.

The press ignored the multitude of stable, high-paying jobs that trade has created in this country. And they ignored the benefits of free trade to the consumers of this country. Let's not forget that tariffs are simply a tax imposed on goods that consumers buy.

The President and Ms. Barshefsky must use their positions as leaders to articulate the benefits of free trade. Tell the American people how workers and farmers benefit from free trade policies. Tell them how much consumers save on their groceries and clothing bills because of free trade. Articulate your vision for expanding economic opportunity in this country by selling our products overseas. Leadership is sorely needed.

President Clinton, I believe you have chosen the right person in Charlene Barshefsky. But you will ultimately be measured by your willingness or failure to lead the American people toward a brighter future in a global economy.

Mr. President, I would also like to say a brief word on the Hollings amendment. It seems to me that Senator HOLLINGS is really concerned with a fundamental question that we all must answer. That is, what is the relationship between Congress and the President in making trade policy. In other words, does the President have the authority to enter into international agreements, that change U.S. law, without congressional consent?

Despite the debate that you will hear today, the answer to this question is relatively simple. Under our Constitution, the President only has the authority that Congress has granted to him. During the fast track debate, which I hope we'll have this year, Congress will define the limits of the Presidential authority on trade matters.

But let's be clear about one thing. The President does not have the authority to change U.S. statutory law without congressional action. That is why Congress had to approve implementing legislation after the President signed the NAFTA agreement and the Uruguay round agreement in recent years. The President did not have the authority to unilaterally consent to these significant changes in U.S. law.

That is why I believe this amendment is unnecessary. But I also think it could be dangerous. The amendment is drafted so broadly that it could subject an agreement to congressional approval every time it affects a minor regulation or administrative practice. In my opinion, this would result in very few trade agreements being consummated. Our trading partners would never have the assurance they were negotiating an agreement that would be recognized by Congress.

Look at just what we have accomplished in the last few months, negotiating the Informational Technology Agreement and the Telecommunications Agreement. These landmark agreements will result in thousands of high-paying jobs being created in the United States. I don't believe these agreements would have been possible given the chilling effect of the Hollings amendment.

So I urge my colleagues to vote "no" on the Hollings amendment and then vote to confirm Charlene Barshefsky. It's time to focus on moving this country ahead by negotiating new agreements and opening new markets to U.S. exports.

Mr. MOYNIHAN. Mr. President, I yield 10 minutes to the distinguished Senator from Montana.

Mr. BAUCUS. Mr. President, I thank my very distinguished colleague from New York. Not only the residents, citizens, and voters of the State of New York, but the rest of us in the country are very fortunate to have in the U.S. Senate the Senator from New York. He has added so much to our understanding of historical issues, cultural issues, and institutional memory. I just want to thank the Senator very much for all he has done for us.

Mr. MOYNIHAN. I thank the Senator from Montana.

Mr. BAUCUS. Mr. President, I support strongly the nomination of Charlene Barshefsky as U.S. Trade Representative. Why is that? Although the Senator from South Carolina raises very important issues—and I underline that; they are extremely important—I think we can't wait. We have very important trade issues facing us at the moment. We have a superb candidate in Charlene Barshefsky, who is awaiting confirmation. I believe we have no alternative, no choice, but to do the right thing. And the right thing is to get on with it, let her get on with the job, and let's confirm her as our USTR. At the appropriate time, at a later moment, we will take up the issues raised by the Senator from South Carolina, and they are very important issues indeed.

I might remind everyone that our international trade is growing dramatically. When Congress created the position of USTR just over 20 years ago, imports and exports, together, made up only about one-eighth of the U.S. economy. Today, international trade makes up nearly a full third of our economy. That is a dramatic increase, from one-eighth to one-third, in just over 20 years. Last year, exports of goods and services reached a total of $835 billion, and in agriculture, which is the largest industry in my State of Montana, we saw exports hit $60 billion last year.

(Ms. COLLINS assumed the chair.)

Mr. BAUCUS. I might say, too, Madam President, that the people understand this. Last year they came from all over Montana to a trade conference I hosted on how we can establish better trade relationships with and engage more deeply with China. People came from all over our State. I was amazed at the success of that conference. The Chinese Ambassador was there, and also, I might add, we invited our U.S. Ambassador to China, the Honorable Jim Sasser—he very much wanted to come but was unable because of a last moment conflict.

I might also remind us that American imports also hit a record of about $949 billion last year. We imported more than we exported. That may not be so good. But the point is that we as Americans are competing more than ever before against foreign competition, whether it is in heavy industry, high technology, or agricultural services. It all underlines the importance of trade in general and also the importance of being sure that we have a top-notch trade negotiator to make sure it is all fair. And we certainly have that in Charlene Barshefsky.

What has she done? For my State of Montana, I'll mention one thing in particular. She and her predecessor, Mickey Kantor, worked vigorously to enforce agreement with Canada to restrict the deluge of grain coming down to the United States as near as 1993 and 1994. Wheat ordinarily received in the United States was about 1.35 million metric tons of Canadian grain. In those 2 years it rose to about 2.4 million metric tons. It depressed prices in the American markets and violated, frankly, a tentative, implicit agreement with the Canadians.

I must say I was very impressed with the vigor and enthusiasm with which Charlene Barshefsky helped negotiate that agreement. Because of her work, Montana farmers got some confidence that trade would be fair.

Second, exports of beef. This is the first time in American history—in 1996—when we exported more beef than we imported. A lot of beef producers in the United States are concerned and have the impression that we import more than we export. That has been true in the past.

I might say that about 5 years ago we imported about 2 million pounds of beef and we exported only about 75,000 pounds, in that magnitude. But in the last 5 years it has reversed, and for the first time, in 1996, we exported more. We exported more beef than we imported because, again, of the vigorous efforts of our trade negotiators in opening up foreign markets for American products.

I am sure other folks from around the country understand and have similar stories that they can pass on to us.

She has done a terrific job. And we need someone of her caliber on the job full time, as we enter a new era in tackling very difficult new issues.

I might remind us that for most of the 1980's and 1990's, trade policy revolved around three major areas: in the Uruguay round of GATT, NAFTA, and our market access problems with Japan. These areas still remain on our agenda. We have to monitor the WTO. We have to monitor the NAFTA closely. And our trade imbalance with Japan remains our largest bilateral deficit yet, although it is being surpassed by that of China.

It is only fair to say that after a great deal of hard work from Charlene Barshefsky and the USTR staff that our performance with Japan has improved markedly. Counting goods and services, exports are up from $75 billion to over $100 billion last year; quite an improvement.

As important as these issues are, we now must look ahead to two new strategic challenges in trade. First is whether to negotiate new trade agreements, and, if so, what should they be? For example, the administration has pledged to work toward a hemispheric trade agreement and also to pursue market access in Asia through the Asia-Pacific Economic Cooperation Forum, and through bilateral agreements.

These are broad, long-term, important goals. Much about them remains to be decided. But the administration will soon ask for fast-track authority to make any serious steps forward, and it is clear that Americans have a right to expect greater market access from these countries.

I look forward, as we all do in the Senate, to hearing from the administration as to what specific agreement it envisions and how these agreements will address contentious issues like treatment of trade-related labor and environmental issues. When that is available, in principle, I believe the Congress should grant fast-track authority. And I will work with Ambassador Barshefsky and the administration as to what the terms are, of how broad the scope is, so that we have in the Congress a very good mutual agreement and partnership with the administration as we work together to develop these trade agreements.

The second is the integration of formerly Communist countries into the world trade system. China, Russia, Ukraine, Vietnam, and other post-Communist nations make up about a third of the world's population. They are large producers of manufactured products, primarily commodities, and agricultural goods. All hope to enter the WTO, the World Trade Organization.

Their reform efforts are commendable but remain incomplete. Most of these countries retain pervasive subsidies, poorly developed price systems, and close links between government and business which make them particularly challenging candidates for WTO membership. Weak accession protocols could make market access very difficult for years to come and could also promote dumping in a wide range of areas.

China is the largest of these countries and the most immediate candidate for WTO membership—not to mention that it is the world's largest country and the fastest growing large economy. So its WTO access will have enormous consequences in its own right, and it will very likely serve as a model for others.

I will have more to say on this subject at a later date. But the USTR and Congress must be very careful and very rigorous. China and other WTO applicants must meet international standards not only on traditional tariff and quota issues but also on national treatment, trading rights, transparency, subsidies, and safeguards against import surges, and many other issues. On our side of the table, we must be willing to address the question of permanent MFN status for these countries if we are to gain the full benefit of their WTO membership.

These are difficult and complex issues, but I am confident that Ambassador Barshefsky is the right person to take them on. I can think of none better. She is terrific. She is intelligent, tough, capable, and she has proven herself one of the best public servants America has, and we need her on the job.

I support the nomination and I support the waiver to make it possible. And while the Senator from South Carolina has an amendment which raises a very serious and very important issue, that is one which we should bring through the normal committee process. It should not stop the nomination of Charlene Barshefsky. We need a tough negotiator. We have her right before us. We need her now in Geneva. During this week WTO is attempting to negotiate terms with China. We need her there to negotiate for us.

I warmly endorse her nomination. I hope my colleagues will do the same.

Thank you, Madam President.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Madam President, I yield 7 minutes to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I thank the Chair, and I thank the distinguished manager of this bill.

Madam President, I wish to express my wholehearted support for Ambassador Barshefsky. In my dealings with her over the years, I have found her to be a skilled and certainly an expert trade negotiator, who has worked tirelessly on behalf of U.S. interests. I have no doubt as to her integrity and her commitment to this job. And I believe that view is shared by every single member of the Finance Committee, all of whom have worked closely with her. Thus, I urge my colleagues to support her nomination with a strong show of support in the upcoming vote.

Before we vote on the nomination, Madam President, we must first vote on the amendment to Senate Joint Resolution 5 offered by the distinguished Senator from South Carolina, Senator HOLLINGS. The amendment requires that any trade agreement that in effect amends U.S. law must be approved by Congress.

I must say that this amendment puzzles me. Trade agreements to which the United States is a party and the call for changes to U.S. law, have no force of law whatsoever until implementing legislation is passed by Congress. Congress always has the final say.

The USTR takes pains to ensure that Congress is involved in every step along the way in these trade negotiations. As a member of the Finance Committee, I can personally testify to the fact that the USTR provides regular and, indeed, frequent—indeed, in

abundance, a plethora of—briefings on all of the international discussions.

During 1995 and then again in 1996, the USTR provided literally hundreds of briefings to Members and more than a dozen committees on ongoing trade issues and responded to approximately 200 congressional requests for information every month. That is what was going on in the USTR's office. The Finance Committee staff is briefed exhaustively, as are the staff involved with several other committees. Any Member who has an interest in a particular issue can request personal briefings. That has been the process, not only during this administration but during prior administrations. It is the right process. Trade, obviously, is not solely the privilege of the executive branch but a responsibility conferred by the Constitution on the Congress.

Do Congress and the administration always agree? Of course not. Indeed, if the disagreement is strong enough, the administration runs the risk of Congress flatly rejecting the arguments in question. Thus, in this process is the built-in enforcement mechanism that constantly keeps individuals in touch.

So the amendment that is being proposed puzzles me. It does seem to reiterate current process but there are two words that give me pause. The words "in effect." What exactly does "in effect amend or repeal statutory law of the U.S." mean? Is it a reference to regulations? Regulations are issued under statutory authority. Is it a reference to the administration officials changing the law by themselves? But the Constitution does not allow that. Only Congress can change U.S. law.

So it seems that the amendment may be aimed at the recently concluded telecommunications agreement and at certain provisions of that agreement. As I have outlined, the process of negotiating trade agreements takes into account the individual views of Members of Congress. The end results of trade agreements may include certain provisions that some of us do not like. I can clearly remember Senator Danforth of Missouri was not too pleased with the final provisions of the Uruguay Round on subsidies. He did not like it. Yet, he worked with the administration on the implementing legislation and at the end of the day chose to give the agreement his support.

Disagreement with provisions of final trade agreements is going to happen. Clearly, with 435 Members of the House and 100 Members of the Senate, there are going to be disagreements with the administration. To minimize these, we individually or in groups make sure the administration is aware of our views. We go to the STR during the negotiating sessions and say this is what I am concerned with. This is what we are concerned with in my part of the country. And at the end of the day the agreement may or may not be satisfactory. If we feel strongly enough that it is not satisfactory, we are free to express our views, that is, vote against the proposal, vote against the treaty.

So my conclusion, Madam President, is twofold. First, it simply is not clear what this amendment would do if it is enacted. Any legislation with an unclear meaning simply, in my judgment, is not wise legislation to enact.

Second, if the amendment is to express displeasure with a particular provision of, say, the telecommunications agreement, we already have in place a system that takes into account such views. I might also note that I understand from the leadership of the Finance Committee if this amendment, the Hollings amendment, is adopted, it would cause the House to reject consideration of Senate Joint Resolution 5, thus placing the Barshefsky nomination in jeopardy.

So this is a grave matter, Madam President. It is in the very clear interest of the United States to put in place as soon as possible a strong and effective special trade representative. In other words, Ms. Barshefsky. She needs to be on the job. We have a lot of trade discussions and disputes that are ongoing. Charlene Barshefsky is an absolutely superb advocate and we need to get her confirmed. So for these reasons, I am supporting the nomination and the waiver bill and cannot support the proposed amendment. So I urge my colleagues to reject the Hollings amendment¿¿¿and¿¿¿ to¿¿¿ vote¿¿¿ for¿¿¿ the¿¿¿ waiver¿¿¿ and for the nomination of Charlene Barshefsky.

I thank the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I yield 5 minutes to the distinguished Senator from Florida, a member of the Committee on Finance, who is one of those who voted unanimously to report this nomination to the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized for 5 minutes.

Mr. GRAHAM. Thank you, Madam President, and I thank the Senator from New York.

I urge the Senate to move expeditiously to confirm Ambassador Charlene Barshefsky as U.S. Trade Representative. She is the right person at the right time for the very difficult task she will be undertaking.

I also urge the immediate passage of Senate Joint Resolution 5, without amendment, to extend the waiver for the position which Ambassador Barshefsky currently holds as Deputy U.S. Trade Representative. This waiver as granted under Senate Joint Resolution 5 applies only to Ambassador Barshefsky. It does not change the underlying law, nor does it create a precedent for future waivers. This waiver deserves to pass without amendment. The merits of the issue which are being raised by my friend and colleague from South Carolina deserve to be heard, but I would submit that this is not the forum for the resolution of those questions. There will be other more appropriate times which will not entail endangering the expeditious confirmation of Ambassador Barshefsky to her important post.

As Senator MOYNIHAN has just stated, when Ambassador Barshefsky's nomination was presented to the Finance Committee, her record was carefully examined. The result of that examination was a unanimous vote by the committee in favor of her confirmation. Ambassador Barshefsky was referred to at the confirmation hearing as one of the most qualified, seasoned trade negotiators ever to be offered for this position. As Deputy and Acting U.S. Trade Representative, she has been an outstanding advocate of the trade interests of the United States of America. She has proven herself to be a brilliant negotiator. The Finance Committee and, I hope soon, the Senate as a whole will recognize these qualities. Ambassador Barshefsky has demonstrated a consistent focus on opening global markets, opening those markets through bilateral and multilateral trade agreements that increase export opportunities for U.S. businesses and creates jobs for U.S. workers. She has played an instrumental role in solving trade disputes with Japan, China, and numerous other nations on behalf of the United States.

Madam President, I was recently in Florida with a group of representatives of important agricultural interests who were looking forward to going to China with Ambassador Barshefsky to open markets for American agriculture in that tremendous nation of population. That is an example of the aggressive pursuit of opportunities for American industry and agriculture that has hallmarked Ambassador Barshefsky's performance in her current positions and will do likewise when she is confirmed as the U.S. Trade Representative.

It is a pleasure to give this outstanding nominee my unqualified endorsement. I have no question that Ambassador Barshefsky will be an outstanding representative and leader at the U.S. Trade Representative office. I urge my colleagues to join in voting to confirm her nomination today. We need a timely decision. We have already paid a cost for the delay that has occurred to date. The U.S. trade position is weakened when it does not have a confirmed U.S. Trade Representative representing our interests. We need to transfer that weakness into the strength of steel that will come when Charlene Barshefsky represents the United States as our Ambassador, as the U.S. Trade Representative.

I thank the Chair.

Mr. ROTH. Madam President, I yield 3 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. ALLARD. I thank the Senator from Delaware for yielding me some time.

Madam President, today we must decide to vote in favor of a waiver to allow a very competent and worthy candidate to be the new U.S. Trade Representative or to vote to uphold current law. I have decided to uphold current law. It must be made clear that I do not doubt the competency and ability of Ambassador Barshefsky to faithfully serve as the next U.S. Trade Representative. She has done a tremendous job as the Deputy USTR and has proven herself to be a competent public servant.

The law we are asked to waive is not some arcane law that has been on the books for decades which may have served us well in the past but is a law that was passed only 2 years ago. The Lobbying Disclosure Act of 1995 was a very important piece of legislation that opened the doors to the public to see who is attempting to influence our elected officials. Section 21 of the act specifically states that no person who has represented a foreign entity may be appointed as a U.S. Trade Representative or the Deputy U.S. Trade Representative.

Madam President, I ask unanimous consent to have printed in the RECORD section 21 of the Lobbying Disclosure Act and from the United States Code section 2171(b).

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOBBYING DISCLOSURE ACT OF 1995

SEC. 21. BAN ON TRADE REPRESENTATIVE REPRESENTING OR ADVISING FOREIGN ENTITIES.

(a) REPRESENTING AFTER SERVICE.—Section 207(f)(2) of title 18, United States Code, is amended by—

(1) inserting "or Deputy United States Trade Representative" after "is the United States Trade Representative"; and

(2) striking "within 3 years" and inserting "at any time".

(b) LIMITATION ON APPOINTMENT AS UNITED STATES TRADE REPRESENTATIVE AND DEPUTY UNITED STATES TRADE REPRESENTATIVE.—Section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)) is amended by adding at the end the following new paragraph:

"(3) LIMITATION ON APPOINTMENTS.—A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18, United States Code) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to an individual appointed as United States Trade Representative or as a Deputy United States Trade Representative on or after the date of enactment of this Act.

(b) United States Trade Representative; Deputy United States Trade Representatives.

(1) The Office shall be headed by the United States Trade Representative who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. The United States Trade Representative shall hold office at the pleasure of the President, shall be entitled to receive the same allowances as a chief of mission, and shall have the rank of Ambassador Extraordinary and Plenipotentiary.

(2) There shall be in the Office three Deputy United States Trade Representatives who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of a Deputy United States Trade Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on Finance. Each Deputy United States Trade Representative shall hold office at the pleasure of the President and shall have the rank of Ambassador.

(3) Limitation of appointments. A person who has directly represented, aided, or advised a foreign entity (as defined by section 207(f)(3) of title 18) in any trade negotiation, or trade dispute, with the United States may not be appointed as United States Trade Representative or as a Deputy United States Trade Representative.

Mr. ALLARD. Madam President, while I regret that I have to vote against Ambassador Barshefsky's worthy nomination, I believe as lawmakers we must not only strive to enact the best laws but also to obey not only the letter of the law but also the spirit of the law. Why do we pass laws if the first time they become problematic, we decide to grant a waiver. In the last couple of months, I have heard too many politicians say that it was out of necessity that they bend the law or ignore the spirit of the law or assume that it may not be illegal, and then promise it will not happen again. My solution to this dilemma is to follow the law or repeal it.

While in the other body, I voted for the Lobbying Disclosure Act and have consistently promised my constituents that I will work hard to enact congressional reform. In this vein, I cannot turn my back on them or on the law that I fought hard to enact. I understand why many will vote for this waiver because Ambassador Barshefsky would make a tremendous USTR, but I must regretfully vote no and only hope that this waiver granting procedure doesn't start a bad precedent for the future. In conclusion, I am voting against the Hollings amendment and the waiver.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Madam President, I yield myself such time as I may use on the hour for the resolution.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Madam President, on January 30, 1997, the Committee on Finance unanimously reported without amendment Senate Joint Resolution 5, the waiver resolution for Ambassador Charlene Barshefsky's appointment to serve as U.S. Trade Representative. As I said earlier, I strongly support Ambassador Barshefsky's nomination. Therefore, in order to expedite the appointment of this nominee, it is my considered opinion as chairman of the Finance Committee, that the waiver should remain clean and should not be amended.

Now, Senator HOLLINGS has introduced an amendment to the waiver. This amendment would require congressional approval of any trade agreement that "in effect" amends or repeals U.S. statutory law.

While I am convinced that as a general matter the Senate should not add amendments to the waiver, I have a number of concerns specifically about Senator HOLLINGS' amendment, which lead me to oppose the amendment most strongly and to urge my colleagues to vote against it.

My primary concern is that passage of the Hollings amendment will seriously jeopardize Ambassador Barshefsky's nomination. I have a letter from Chairman Archer of the House Ways and Means Committee stating that the House would view the Hollings provision as a revenue measure that, under the origination clause of the Constitution, must originate in the House of Representatives. As such, Chairman Archer informs me that he will invoke the constitutional prerogative of the House to refuse to consider the waiver resolution for Ambassador Barshefsky if the Hollings amendment is added.

I ask unanimous consent that Chairman Archer's letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ROTH. I want to emphasize one point to those that support the Barshefsky nomination. Regardless of whether one supports the Hollings amendment on the merits, the House will blue slip it. This means that not only will the House kill the Hollings amendment, but the Barshefsky waiver along with it.

This fact alone is ample reason to vote against the Hollings amendment.

In addition to this procedural concern, I also have substantive problems with the Hollings amendment. I admit this amendment may have some superficial appeal. Nonetheless, it is completely unnecessary because it is based on a false assumption, implying a problem that simply does not exist. The amendment gives the erroneous impression that the President is currently able to implement international trade agreements calling for changes in

U.S. statutory law without the passage of implementing legislation by Congress. That is simply not true. If a trade agreement requires changes in U.S. statutory law, Congress must enact the legislation to implement those changes. Congress must pass that legislation in order for the agreement to have full force and effect with respect to the United States.

A good example is the OECD Shipbuilding Subsidies Agreement, a trade agreement that was negotiated in 1994. Congress has been unable to pass legislation to implement the changes in U.S. law called for under that agreement. As a result, the agreement has no force and effect with respect to the United States. Absent congressional passage of implementing legislation, there is nothing the President can do to implement the agreement on his own.

Now, what if Congress and the President have a legitimate disagreement about whether a particular trade agreement calls for a change in U.S. law? My understanding is that this issue is the basis of Senator HOLLINGS' concern—that the President can act to supersede laws passed by Congress.

First of all, this is not a situation where trade agreements are somehow deemed to be treaties, with the full force of law, but which, unlike a treaty, the President is able to implement without Congressional approval. Trade agreements are executive agreements. And the simple fact is that if there is an inconsistency between an executive agreement and a statute, the statute prevails. In other words, a law passed by Congress remains on the books in full force and effect and cannot somehow be trumped by an executive agreement or any other action by the President.

In my opinion, the language in the Hollings amendment requiring that Congress approve any trade agreement that "would in effect amend or repeal" U.S. statutory law also suffers from several other defects.

It is vague, subjective, leaves undefined what "in effect" means, and does not specify who determines whether a law is effectively changed by a trade agreement.

Trade agreements cannot effectively change or repeal U.S. law. An agreement may call for actual changes in U.S. statutory law, in which case, as I have already explained, Congress must pass implementing legislation in order for it to have force and effect with respect to the United States. Or an agreement does not call for such changes, in which case it can be implemented without congressional action. Indeed, the language in the Hollings provision is so vague and ill-defined, that it could require congressional approval of any and every trade agreement the President negotiates, even those not calling for actual changes in U.S. statutory law. This could immobilize our ability to negotiate trade agreements, even on relatively minor issues, as Congress would be required to approve tens, if not hundreds of such agreements.

All of these agreements would also be fully amendable. The result would be to shackle our capacity to conduct any trade policy.

Because the language in the amendment is so vague, I also fear that it could call into question the legal status of previous agreements that have not been fully implemented, including the recently concluded Information Technologies Agreement. This landmark agreement was completed pursuant to authority provided to the President by Congress under the Uruguay Round Agreements Act, and currently needs no further congressional action in order to be fully implemented. However, that situation could change under the Hollings amendment, which would seriously jeopardize this historic agreement to provide a market opening for U.S. companies worth $500 billion a year.

The amendment appears to be driven, in part, by Senator HOLLINGS' concerns about the telecommunications agreement recently negotiated at the World Trade Organization.

My understanding is that Senator HOLLINGS believes the commitments the administration makes in the telecommunications agreement will change current U.S. telecommunications law without Congress having the opportunity to pass implementing legislation.

I would like to point out that others disagree with Senator HOLLINGS' view that this agreement will change current U.S. law. Senator MCCAIN, chairman of the Senate Committee on Commerce, Science and Transportation, Senator BURNS, along with Congressman OXLEY, vice-chair of the House Telecommunications Subcommittee, wrote a letter to the President expressing their view that no implementing legislation is necessary.

I ask unanimous consent that this letter also be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ROTH. In conclusion, Madam President, we must keep focused on the task at hand—fulfilling the Senate's constitutional prerogative with respect to Ambassador Barshefsky's nomination. We should not be bogging this nomination down with extraneous and controversial matters, such as the Hollings amendment. Therefore, I urge my colleagues to join me in voting to table the Hollings amendment, which will be made at the appropriate time.

Madam President, I reserve the remainder of my time.

EXHIBIT 1

COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 1997.

Hon. WILLIAM V. ROTH, Jr., Chairman,
Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN ROTH: I am writing in reference to legislation that would waive the application of section 141(b)(3) of the Trade Act of 1974, as amended by the Lobby Disclosure Act, with respect to the nomination of Ambassador Charlene Barshefsky as United States Trade Representative. As you know, I fully support Ambassador Barshefsky's nomination and urge the Senate to pass quickly legislation permitting her confirmation so that the House may then consider it promptly.

At the same time, I am concerned that the legislation passed by the Senate may include provisions that contravene the origination clause of the U.S. Constitution, which provides that revenue measures must originate in the House. Specifically, I understand that the Senate may be asked to consider particular provisions, such as one suggested by Senator Hollings, which would change the manner in which Congress considers trade agreements and legislation having a direct effect on customs revenues. Although I strongly support Ambassador Barshefsky's nomination, I would have no choice but to insist on the House's Constitutional prerogatives and to seek the return to the Senate of any legislation including such a provision.

I look forward to working with you on this matter.

With best personal regards,

BILL ARCHER,
Chairman.

EXHIBIT 2

CONGRESS OF THE UNITED STATES,
Washington, DC, February 11, 1997.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We write regarding inaccuracies in correspondence you reportedly have received from a few of our colleagues regarding the World Trade Organization (WTO) telecommunications talks and restrictions on international investment.

As you are aware, officials of the United States Trade Representative (USTR) are hard at work negotiating a market-opening agreement in the WTO Group on Basic Telecommunications (GBT). Questions have been raised concerning the Administration's authority to negotiate an agreement lowering barriers to international investment.

It has been stated that USTR sought amendments to the Telecommunications Act of 1996 to clarify legal limits on foreign investment in U.S. telecommunications firms. This is incorrect. As the authors of the Senate and House foreign ownership provisions, we wish to state for the record that we were acting on our own initiative and that no Administration official requested that we legislate in this area. Any discussions we had with the Administration on these issues came at our request.

We firmly believe that the Administration possesses the authority to negotiate an agreement without implementing legislation. Indeed, the correct legal interpretation of the relevant statute is that private foreign firms are free to invest in American firms without restriction unless "the [Federal Communications] Commission finds that the public interest will be served by the refusal or revocation" of a telecommunications license. To allege that implementing legislation is necessary is to misinterpret

the law. Indeed, it is the very prevalence of such misreadings that caused us to attempt to reform the ownership rules.

We wish to state our support for USTR's negotiators. We appreciate their work to promote free trade in goods and services. We believe that a freer flow of capital is a logical extension of this policy. Artificial limits on international investment only harm U.S. firms by denying them access to foreign capital and foreign markets.

Thank you for your consideration on these thoughts.

Yours truly,

JOHN MCCAIN,
Chairman, Senate Committee on Commerce, Science and Transportation.
MICHAEL G. OXLEY,
Vice Chairman, House Subcommittee on Telecommunications, Trade and Consumer Protection.
CONRAD BURNS,
Chairman, Senate Subcommittee on Communications.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Madam President, I rise simply to endorse, with fullest conviction, the statement of the chairman in this matter, and to emphasize, if I may be allowed, that executive agreements can never override statute. If they do, they are null and void, and the courts will so hold.

For us even to suggest that that might be possible would be to introduce into our governmental administrative arrangements matters of ambiguity and doubt and uncertainty that would have the capacity to incapacitate what has turned out to be an extraordinarily successful procedure in world trade.

It has taken us 60 years—63 from the Reciprocal Trade Agreements Act of 1934—to reach a point where we are the world's largest trading nation and leading the way in these matters in the world and hugely respected for that and known to have the capacity to negotiate when the Congress gives that authority to the President. The subsequent negotiations are executive agreements. If any part of them should, by inadvertence or intention, be contrary to present statutory law, they are null and void. That proposition must never be put into question as I fear this matter before us might do.

I yield the floor and thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

Madam President, it is difficult to really determine the position of our distinguished leadership on the Finance Committee. In one breath, they say it is unnecessary and, in the next breath, they say it is going to really ruin $500 billion in trade. Then they come back and say the statutory law pertains and talk at length about how they have worked over the years with Ambassador-designate Barshefsky.

In fact, the point was just made by my distinguished colleague from New York, since 1934, they have been working. I have been on the Communications Subcommittee of the Commerce Committee for 30 years, and I watched it develop over that 30-year period. When we had a majority on our side of the aisle, I introduced the formative legislation to revise that 1934 Communications Act with the initiative that would allow the trade representative to negotiate an international telecommunications agreement.

I am totally familiar, during the past 3 to 4 years, with what they are talking about because this is a Senator who has been working with the White House and with the trade representative, be it Ambassador Kantor or now Ambassador Barshefsky.

It was Ambassador Kantor who said the law needed amending. I already had that letter printed in the RECORD. Now they say there is no law to be amended. Heavens above. In fact, the distinguished Senator from Iowa, Senator GRASSLEY, comes in here and says it is totally unnecessary. He said, "Actually, my provision, which is constitutional"—that is all it does, is cite a fundamental of the Constitution that you have in order to amend or repeal a statute. It is not a regulation, as the Senator from Rhode Island tried to read into it.

It is very simple, very clear, not vague, not vague at all. It is the constitutional provision of three readings in the House, three readings in the Senate, and signed by the President.

When they say it is unnecessary, just look at the letters just inserted in the RECORD. I refer to the letter of the Senator from Arizona, Senator MCCAIN, the Senator from Montana, Senator BURNS, and Congressman OXLEY on the House side, and they say:

We firmly believe that the administration possesses the authority to negotiate an agreement without implementing legislation.

Now, heavens above, we know Ambassador Kantor thought so and asked that it be changed. I ask unanimous consent to have printed in the RECORD section 310(a) and section 310(b) of the Communications Act of 1934.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SEC. 310. [47 U.S.C. 310] LIMITATION ON HOLDING AND TRANSFER OF LICENSES.

(a) The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof.

(b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

Mr. HOLLINGS. Madam President, let's just read 310(a):

The station license required under this Act shall not be granted to or held by any foreign government or the representative thereof . . .

And in section (b) starting off:

No broadcast or common carrier license—

And I jump down to four:

. . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country.

It is just as plain as can be and very simple, totally disregarded by Ms. Barshefsky. We kept telling her, we wrote the White House letters, we admonished, "Wait a minute, your predecessor came before us, testified, asked that it be changed," and then we see in the letter by these three gentlemen the phrase "as authors of the Senate and House foreign ownership provisions." False. Mr. OXLEY, yes, at the request of the administration. On the House side, it put in there the 100-percent ownership which could be negotiated away. That was never agreed to.

I authored the reciprocity provision with the snapback condition on the Senate side. So I have to correct the distinguished chairman of my committee and the chairman of our subcommittee, Senators MCCAIN and BURNS. As the authors, this is very misleading to the particular body here and the other Senators reading that. And then reading further, "No administration official requested that we legislate in this area." These gentlemen were not intimate to the negotiations or members of the conference committee that actually did the work.

Let me refer to, on August 4, 1995, the CONGRESSIONAL RECORD. Page 8451 is the page. I am quoting Mr. BLILEY, the chairman of the Commerce Committee on the House side and the chief negotiator for the House membership. I quote:

Additionally, we have addressed the issue of foreign ownership or equity interest in domestic telecommunications companies. The

new language reflects the hard work of Messrs. DINGELL and OXLEY, who sponsored the proposal in committee, the administration and myself. I must observe, Mr. Chairman, that the foreign ownership issue is the only matter on which the administration offered specific language to the Commerce Committee. And I believe this administration's concerns have been largely resolved.

Madam President, there it is. We made the official RECORD. The administration, after they did not get their desired result on the Senate side, went to work on the House side. And they did request, where they say no request after requesting us. We talked to them back in 1995 several times. We knew exactly what they had in mind. We tried to comply. But we did not change the law.

Now we have leading Senators, the chairman of our full committee and the chairman of our subcommittee, saying that the administration possesses the authority to give away 100 percent in violation of sections 310(a) and 310(b). That is why it is necessary. To be told now on the Senate floor that the Constitution, that we all take an oath to support and protect—it has a chilling effect that is out of the whole cloth. To come now and say it is vague is out of the whole cloth. You cannot make language any more categorical. I did not say "regulation," like they tried to read and make for confusion. It is just as plain as can be.

I have talked with many of the Members, and asked if they wanted it changed in any way. And they said they did not see how you could vote against it. Well, the way they vote against it is to come up and now argue the capabilities of what I was going to hear again.

Heavens above. When we had Ambassador Carla Hills, who is now gone in representation I guess, we had to put the provision in law. I am glad to see the Senator from Colorado on the floor saying that he did not agree with that waiver. That was the Dole waiver that we are talking about. The Hollings waiver, which is on the appropriations bill, that is in relation to the special trade or U.S. Trade Representative, that you shall not engage in the representing of foreign interests in trade for a 5-year period, which applies of course to our distinguished friend, Mickey Kantor.

But when we had Carla Hills, every one of these negotiators—the Finance Committee leadership comes with again the "Dragon Lady, Dragon Lady," "Oh, man, tough, tough, tough." He did say, the Senator from New York, that Ms. Barshefsky was formidable to the point of being dazzling. Well, I will agree. She has been dazzling. And this Senator has not. That is exactly the point I am trying to make.

I met with Ms. Barshefsky, and she did have a dazzling approach of "I want to work with you. I want to work with you. I want to work with you." As I have stated earlier, "Madam, I want you to work with the law, not me. Just adhere to this law."

We have had this in dispute. We have had this in discussion. We have had this in negotiation with Members and Senate leadership in the Congress, leadership in the White House. And the law is the law. It has not been changed.

And they go there and can justify further that the distinguished negotiator is so tough she just walked away on the telecommunications negotiations.

Well, that is not what the Wall Street Journal stated on May 20 of last year. And I quote:

U.S. negotiators did pull back from a telecom deal at the 11th hour, but not because Clintonites were queasy about inking another market opening pact in an election year. Administration trade officials would have been delighted to trumpet a telecom deal to counter mounting U.S. skepticism about the WTO's accomplishments, but they walked away from the table after industry executives and leading Republican and Democratic Senators balked.

Madam President, that is exactly what happened on the telecom deal.

And they mention the capacity deal out there in Singapore. One would say how she worked so hard. Well, she gave away the store, without talking to the capacity manufacturers, specifically she gave away 4,000 jobs in the Carolina's.

The Japanese make these capacities, but when she did away with the 9.6-percent tariff, you have the weakness of the yen combined with the tariff phased out. The existence of Kaymet in Greenville, SC, I remember that. And I asked the officials there, and they were never contacted. Just at the last minute they agreed to it. Fine, you can get when you give away the store in capacities, when you give away your broadcast entities.

Under this agreement—I want to make it crystal clear—Nippon Telephone & Telegraph can come in here and buy CBS, ABC, NBC.

I talked earlier with one Senator. He was talking about the opportunity that Castro seems to do business with the Canadians. He could get the Canadians to come in and buy a station down in Miami and really turn the particular Senator from Florida into an upset condition. He is wanting to get into China and we have to move in a hurry. I have a good eye here today, but the Senator from Florida wants to be able to have any foreign entity come in, Castro or otherwise, Qadhafi, the whole kit and caboodle of the rascals around the world or any foreign country. They delight now in coming in and buying these that we have been trying to protect.

That is why the Members would not agree. They held fast. I am speaking on behalf of the majority of the U.S. Senate, 95 votes, if you please. We approved that. And that was in discussion up until the last minute, and they would not yield. So there it is. They do so well on these other agreements.

Let us see, Madam President, how they have done on this particular one.

If you believe the U.S. Trade Representative, world commerce would come to an end unless we continue to negotiate these one-sided agreements. But the truth of the matter here is Ambassador Barshefsky, in announcing the successful conclusion of this telecom negotiations stated—and I quote:

This agreement represents a change of profound importance.

U.S. companies now have access to nearly 100 percent of 20 telecommunications markets. Now, unfortunately, Madam President, nothing has changed. Nothing has changed at all. Once again, the trade representative has obtained inadequate concessions.

A review of those agreements—not these laudatory press releases—reveals that the market openings are limited, at best, or nonexistent, at worst.

While the United States has agreed to permit complete foreign ownership of our broadcast properties and U.S. telecommunications providers, our major trading partners have severely restricted our access to their most well-established and entrenched companies. USTR claims that Australia, Italy, Japan, France, New Zealand, and Spain have all agreed to permit ownership or control of all telecommunications providers. Yet, you take a closer look and you see there are severe foreign ownership restrictions still remaining in place for Vodafone and Telstra in Australia, with Stet in Italy, KDD and Nippon Telephone and Telegraph in Japan—you cannot own any of it—Telecom NZ in New Zealand, Telefonica in Spain, France Telecom in France that prevents U.S. providers from owning the controlling interests or no interest at all in these telecommunication giants.

U.S. companies have access so long as they are not interested in getting into the best and most sophisticated and competitive companies. They could come in and buy AT&T, not just the companies like GTE, or whatever. They can come in and buy the broadcast properties, which is most disturbing to this particular Senator.

Now, going further, Madam President, Korea, Thailand, Malaysia, India, Hong Kong, the Philippines, and Canada permit no foreign control for facility-based providers. The fastest growing and most important markets in the world are closed tight as a drum. Take the Korean market. Foreign individual shareholding in Korea Telegram is limited to 3 percent—3 percent. We gave away our most powerful negotiating tools, just for 3 percent. When you give away 100 percent, there is no more negotiations, you are through. Ask Senator Dole—been there, done that. It is

over with. You got no more negotiating authority or any negotiating tools.

Or take Canada. The Canadians provide for no foreign control of facility-based providers—none. Yet, under this agreement, Bell Canada can purchase any United States-based provider it wishes. What a wonderful agreement. What a wonderful agreement they are all bragging about.

The other developing markets also include severe restrictions. Brazil has liberalized ownership restrictions only with regard to seller, satellite, and nonpublic services. Mexico has retained ownership restrictions on all types of services except seller. Poland retains foreign ownership restrictions for wireless, international, and long distance. So the total liberalization of the U.S. marketplace, what incentive was that liberalization? What incentive do these countries have to liberalize their particular markets any further? None whatever. None whatever. We have given away the store.

I told you in the very beginning about clothing, and they keep exporting the jobs faster than we can possibly create them—300,000. We were going to create 200,000, but we have exported already, lost 300,000 jobs in textiles alone. And we can go further.

The FCC recently issued an international notice of proposed rulemaking. This particular rulemaking would force foreign providers to lower their prices. However, many of the enforcement mechanisms contained in this particular rulemaking are violations of the MFN, most favored nation provisions. Different benchmarks based on the gross domestic product, denying access to providers from countries who refuse to meet the benchmarks, and granting waivers to those who restructure more quickly are all integral parts of these benchmark policies, but illegal and likely to be challenged, no doubt in the WTO.

So the agreement on telecom can have perverse effects on the price system they are trying to tell us about now, telling the competing countries we have a question there with respect to ownership and MCI, and with respect to Sprint, so they stay quiet. You do not find them all coming in here. And they are being told, "Hush now, at the FCC we will help you with the access places in these international long-distance calls, and we are going to get something done." They will never get it done. Watch this MFN provision and watch the World Trade Organization.

These are the kind of promises that continually come up when we have one of these agreements. Just remember, Madam President, the promises they made with NAFTA. You have to realize, we must learn from experience. As George Santayana said, those who disregard the lessons of history are doomed to repeat them. We should see the history of this wonderful U.S. trade agreement that they had with NAFTA. At that particular time, they said if we fail to pass NAFTA, one, Mexico would face economic collapse; two, immigration would increase; three, drugs would flow freely; four, 200,000 new jobs would not be created; five, the U.S. exports surplus would disappear; six, Asian investors would move into Mexico to take advantage of the growing markets. That is why they said we had to approve NAFTA.

We have approved NAFTA, and this is exactly what happened—exactly what happened. Mexico is in economic collapse; immigration has increased; the drugs flow freely down there; 200,000 jobs have not been created; the U.S. exports surplus has disappeared. We had a $5 billion surplus. It is now a $16 billion deficit. The Asian investors who were going to be prevented from moving in are moving in like gangbusters and dumping back here under NAFTA free trade arrangements into the United States.

I could go on further. I see some here who want to talk, but I will complete this thought now, because we had the classic case for free trade with an emerging country, and the Secretary of Treasury, in particular, the Deputy Secretary of Treasury, Lawrence Summers, said, this is really it, we really are getting free trade now. And everybody is going to get, I think they said, about $1700 for everybody, and we were going to have everybody better off.

Well, Lawrence Summers, he is the one that sold this thing to the House memberships and the Senators. Since that time, he has now appeared on Thursday, January 16, in the Congress, and I quote from the Wall Street Journal of that particular date. "By many measures, most Mexicans are worse off than they were before the financial crisis," Deputy U.S. Treasury Secretary Lawrence Summers conceded.

The Members do not have a sense of history, understanding, or appreciation. What happened is that a million Mexicans have lost their jobs since NAFTA has passed. Wages have fallen by a third. Mexico's external debt reached $150 billion, higher than that during the debt crisis back in 1982. The bold visionary man of the year, Carlos Salinas—that is right, in December, after we voted in November, they made him the man of the year. Now he is living in exile in Ireland and you cannot catch him. He is the man of the year.

This is the kind of nonsense that we have to put up with. If we want to go through the same act, same scene, dragon lady, tough, and everything else, it makes a sorry agreement, sells out the store. And we call that progress, and we have to create jobs, and education, education, education is the solution. Well, Madam President, like I say, if they read one thing, they ought to read the book, "One World, Ready Or Not" by Bill Crider. They will get an education on where we are, because the author spent 2 years going around the world, as well as in the United States, talking to the various executives and quoting them at that particular time. You can't understand some of the various provisions.

I think, since I have the opportunity to present them, we ought to understand, in country after country, the precious rules of international trade. In India, for example, when General Motors wanted to sell its European-made Opal, the price of admission was a radiator cap factory. So GM moved the factory from Britain. In Korea, to sell fast trains, the French agreed to subcontract the assembly to the Koreans. In China, AT&T agreed to manufacture advanced switching equipment as a quid pro quo for wiring Chinese cities. In Australia, if your sales are above a certain threshold, you must negotiate with the Government on an agreement locating research and development in Australia. For production, you must export 50 percent of what you import, and it must have 70 percent local content. At least 33 electronics companies from Japan, Europe, and the United States have agreed to do that.

According to an official from Motorola, "If you don't cooperate with the Australians, they have the statutory authority to exclude you from bidders' lists and deny regulatory permits for products."

Well, Madam President, it's not just out there in the Pacific rim, where the control—Friedrich List kind of control—trade that works, that builds them up. Right this minute, one-half of the world's savings is in the country of Japan. While they are talking about the yen and the devaluation of it and while they are talking about the banking difficulties, watch what Edmund Finkleton said in "Blind Side." Come the year 2000, while they are a bigger manufacturing country, with 120 million, compared to our 260 million and the vast natural resources that we have in the United States, they already outproduce us. They will have a larger economy and gross domestic product—that little country of Japan. Why? They control it. As Friedrich List says, the wealth and strength of a nation, if you please, is measured not by what they consume, but what they produce. Akio Marita went on further—I was at a forum with him about 16 years ago up in Chicago. We were talking about the Third World emerging nations, and he commented: "The emerging country has to develop a manufacturing capacity in order to become a nation state." After we talked a few minutes, he pointed to me and said, "Senator, that world power that loses its manufacturing capacity will cease to be a world power."

We have gone, in a 10-year period, from 26 percent of our work force in manufacturing down now to 13 percent.

We are back to Henry Ford. Henry Ford said that he wanted his workers to be able to purchase the article they were producing. Madam President, today, middle-America workers, not having those manufacturing jobs, can't afford the car. They can't purchase it. We are losing our middle class, all along, if you please, competing with ourselves.

Over 50 percent of what we are importing, if you please, is U.S. multinationally generated. The U.S. multinationals are the fifth column in this trade war that we are in. They are in behind the lines gutting us here in the Congress, working through the special trade representative, trying to take away the authority under the Constitution to make laws and otherwise regulate foreign commerce. That is the authority of the Congress, and that is the reason we have that particular amendment. But we always talk, and I listened to the distinguished President when he talked about trade. He only mentioned exports.

I want to challenge anybody to go to a CPA when they do their tax return next month and say, "Let's just talk about what we got in, not what we spent, just one side of the ledger." If you had a CPA that made up your return that way, you would fire him. But that is constantly, constantly, constantly the way we look at the returns with respect to international trade.

What really happens is, yes, while we in the United States are the most productive industrial workers, whereas we have improved productivity, and whereas we are, for example, in my State, an exporting State—I was just down at a Presidential Exporting Council meeting in Greenville, SC, and we are proud of it—the imports far and away outdistance the exports.

In the last 15 years, before we got to last year, there has been an average of over $100 billion a year deficit, imports, in the balance of trade. That means we have bought from the foreigners $1.5 trillion more than we have sold to them. But how do you get that through to the Finance Committee where they just casually go on and on talking about dragon ladies and what a wonderful agreement we have? What, Madam President, is the merchandise deficit—I say "deficit"; I repeat "deficit"—in the balance of trade last year? The merchandise deficit in merchandise trade was $187 billion.

(Mr. BROWNBACK assumed the chair.)

Mr. HOLLINGS. Now, we made some money off of loans, insurance, and services. So the overall deficit was quoted to be $114 billion. But I am looking at that industrial backbone. I am looking at that economic strength. I am looking at that world power trying to continue being a world power. I am realizing more and more every day that the 7th Fleet and the atom bomb don't count anymore. They just don't regard it. You are not going to use a nuclear attack; we all know that. I was bemused when they moved the fleet into the Taiwan Strait, because, in 1966, I was on an aircraft carrier, the *Kitty Hawk*, up in the Gulf of Tonkin, and we could not stop 20 million North Vietnamese. They didn't have planes and choppers and all this equipment that we had. But we have already tried that aircraft carrier. I wondered how an aircraft carrier or two in the Taiwan Strait was going to stop 1.2 billion Chinese when it could not stop a mere 20 million Vietnamese. Come on. Money talks. The economic strength, and in the world trade councils and otherwise in this global trade war that we are in—we are unilaterally disarming. We are giving away capacity. That capacity agreement in Singapore was where they manufacture them in Japan but Japan very cleverly got the Europeans to bring the pressure on us. And we walked away and said it was a good agreement. And I have lost 4,000 jobs in my State. I am losing thousands of jobs with NAFTA. I am looking around. Now I am seeing in telecommunications—what effect is this going to have? I guess in order to keep the Senator from South Carolina quiet they will buy the TV stations and run them because under the agreement they can. There is no question about it. They can own these broadcast properties.

Down to the basic fundamental involved, just a couple of weeks ago we had Washington's Farewell Address here. The very Founding Father talked about the fundamental of the Hollings amendment. I can almost quote word for word. He said, If, in the opinion of the people, the modification or distribution of the powers under the Constitution be in any particular wrong, then let it be changed in the way that the Constitution designates, for while usurpation in the one instance may be the instrument of good it is the customary weapon by which free governments are destroyed.

That is the line of this particular amendment. We are giving it away. We proceed by a fifth column. We are talking about jobs but we are exporting them faster. We are importing even faster the finished goods. We are weakening the democracy. The middle class is disappearing. And they are all hollering "Whoopee. The economy is good, and let's give some millions so that politicians of one group can investigate politicians of another group about politics." That is the most asinine thing that you have ever seen. But that is where they give all the time. I can see some impatience. They don't want to listen about international trade, and the trade war. No. They don't want to listen about that. But they want to talk about independent prosecutors and investigators. I would give millions to the Federal Election Campaign Commission. They are bipartisan. Let them investigate, no holds barred. I would give even more millions to the Department of Justice. Let them investigate, no holds barred, for any violation of the law.

But mind you me. It seems like we have learned enough here from that Whitewater thing. We went through an exercise. We had 44 hearings, millions of dollars wasted, and time and everything, all hoping to get on TV and investigate each other. Now they want to start up this session and talk about bipartisanship, and not talking about what is eroding the democracy itself in this country. I say that because when I talk about the middle class, Chesterton wrote that the strength of this little democracy here in America was that we had developed a strong middle class.

We are headed, if you please, the way of England. That is what they told the Brits after World War II. "Don't worry. Instead of a nation of brawn, you will be a nation of brains. Instead of producing products, you will provide services; a service economy. Instead of creating wealth, you will handle it and be a financial center." And England has gone to hell in an economic hand basket. You have the haves and the have-nots, London is no more than an amusement park. You go there, and the Parliament is talking the same kind of extraneous nonsense that we are engaged in, and investigating each other and not getting on with the serious matters of truth in budgeting. Let's have it. I am going to talk to a group here in just a minute, and I hope we can get to them so that we can bring the record out about truth in budgeting.

And truth in trade negotiations agreements and trade—an agreement has been made, not a treaty. They insist that you don't have to come back to the Congress itself when they amend the law, and they are in 100-percent agreement of foreign ownership. There is no question about that. They just say it is not necessary while other Members say it is necessary. I thought that we ought to clarify once and for all our duties here, and have a clarion call, or a wake-up call, on this most important issue.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 20 minutes to the distinguished Senator from Arizona.

Mr. MCCAIN. Mr. President, I will not be able to use that time because I have to go to another meeting. I appreciate the time and the courtesy of the Senator from Delaware, Senator ROTH. But I would like to use 20 minutes because my friend from South Carolina covered a broad variety of issues, some of which I assure my colleague from South Carolina we will be addressing in

hearings in the Commerce Committee—the results of NAFTA, the results of free trade; perhaps some of the reasons why unemployment is at its lowest in America. The last quarter it was just downgraded to 3.9 percent GNP growth—the reason Americans finally in the lower middle-incomes are seeing increases; why this economy is the envy of the world; why it is that free trade has played such an important role.

I had the pleasure—the distinct pleasure, I say to my friend from South Carolina—of spending some time in his State. There happened to be an important Republican primary in the last election. It was a great privilege and honor for me to get to know many of the wonderful citizens of his State. In case he has not noticed, they are doing very well. They are working at the BMW plant. They are working at the Sony plant. They are working at all these corporations and companies that have come to this terrible country of ours which is so protectionist and so outrageous. They are coming to our country, I am sure the Senator from South Carolina has noticed. And in the view of the South Carolinians that I spoke to, they think it is a lot better with the high-paying jobs at the BMW plant than at a textile mill; than standing in front of a loom in that kind of back-breaking, sweat labor that existed; where they are getting higher salaries and more benefits, thanks to the companies and corporations that have come into South Carolina; thanks to the enlightened leadership of the State of South Carolina, including the Senator from South Carolina who has attracted them.

Mr. HOLLINGS. Will the Senator yield?

Mr. MCCAIN. I would love to yield. But I just listened for the last 45 minutes to the Senator from South Carolina, and, as much was I would like to hear from him again, I have to go to another meeting. I apologize. But if the Senator from South Carolina would promise me to be brief, I will be glad to yield to him for a brief answer.

Mr. HOLLINGS. We are very proud that the Senator from Arizona has been to the showcase area up there in the Piedmont. But down there we have that situation where there is 11 percent unemployment in Richland, 14 percent in Williamsburg and Barnwell, and, 12 percent over in Marlborough. So we have the haves and have-nots.

I am very proud. I made the first trip to Europe where we have 100 German plants, 50 Japanese plants now. And I am very proud that I instituted the technical training which makes us most productive at BMW. We thank the Senator, very much, for his visit. I would be glad to show him the other parts that I am also worried about.

Mr. MCCAIN. Mr. President, I would say to the Senator from South Carolina that I did travel the entire State. His point is well made that it is not a totally even economy. He can come to my State and find out that in the southern part of my State it is as high as 35 to 40 percent unemployment in the city of Nogales. But the overall economy is good. It is better, in my view, because of free trade, and again the enlightened policies of seeking and obtaining foreign corporations who come in and give high-paying jobs.

I also, by the way, have had the chance to go to Hilton Head and Charleston and some of the other areas that are doing extremely well. But there is no sense in going through a road map of the depiction of the State of South Carolina which is a lovely and beautiful State, as certainly the Senator from South Carolina well knows.

But I want to repeat to him again. We will have hearings in the Commerce Committee about the state of the American economy, about the impact of trade, where protection works and where it doesn't, and what the effects of NAFTA has been and whether we should expand NAFTA, which would be a proposal of the administration.

I will say with all respect to the Senator from South Carolina, I believe the members of the committee and the American people will be enlightened by our debate because I know that the Senator from South Carolina is well informed and holds very strong views, as do I and other members of the committee. I note the Senator from West Virginia is here, who also has his problems within his State.

So I hope the hearings we will have will not only have a legislative result but also will perform the much-needed function of enlightening the American people and our colleagues as to what free trade is all about, its effects, and, by the way, the effects of protectionism and restraint of trade.

I do oppose the amendment offered by Senator HOLLINGS, and I will at the appropriate time offer a motion to table. This amendment, in my view, jeopardizes Ms. Barshefsky's nomination. The chairman of the House Ways and Means Committee, Mr. ARCHER, has conveyed to Finance Committee Chairman ROTH that the House will reject the amendment and thereby kill the nomination of a very qualified individual.

I share with my colleagues the position of the President of the United States. Mr. President, I think it is very important. I ask unanimous consent that the statement of administration policy be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF ADMINISTRATION POLICY

S.J. RES. 5—WAIVER FOR USTR APPOINTMENT (ROTH (R) DE, AND MOYNIHAN (D) NY)

The Administration strongly supports the enactment of S.J. Res. 5, which would authorize the appointment of Charlene Barshefsky as the United States Trade Representative.

When the Senate Considers S.J. Res. 5, Senator Hollings' amendment relating to the President's long-standing authority to carry out trade agreements may also be considered. The Administration strongly opposes the Hollings amendment, which would effect a major change in trade agreement implementing procedures with immediate and harmful effects on U.S. consumers, firms, and workers. The Hollings amendment would hinder, delay, and, in some cases, jeopardize agreements that greatly serve the Nation's interests.

HARMFUL EFFECTS OF THE HOLLINGS AMENDMENT

The Hollings amendment could require congressional approval of every trade agreement that might be construed to require a change in U.S. law. The amendment is unnecessary to assure that the Executive Branch is conforming to congressional mandates on trade negotiations, is overly burdensome for both the President and the Congress, and could endanger the benefits to the United States of some trade agreements.

The overwhelming majority of trade agreements that the President concludes can be—and traditionally have been—implemented under existing statutes. If the authority to implement an agreement does no already exist, then the President must seek that authority. If the President were to implement an agreement in a manner that is not authorized by law, the courts can strike down such actions. If the Congress disagrees with a trade agreement, it can pass legislation directing the President to implement the agreement in a particular way or to refrain entirely from implementing that agreement. If a trade agreement requires a change in statutory law, Congress along has the authority to make such a change. The Hollings amendment is unnecessary to clarify this point.

However, the Hollings amendment goes much further, and the absence of hearings has precluded a full opportunity to determine precisely what the implications of the amendment are. By requiring congressional action whenever a trade agreement would "in effect" change U.S. law, the Hollings amendment could impose long delays on implementing trade agreements that would otherwise bring immediate benefits to U.S. consumers, firms, and workers. Moreover, the vague term "in effect" would cause great uncertainty, since the amendment leaves undefined who determines when an agreement "in effect" requires a change in law and what implications arise for implementing changes in regulation or administrative practice called for in trade agreements.

The burdensome character of the amendment becomes clear when one considers that the Administration concluded approximately 200 trade agreements in the last four years. Under the Hollings amendment, any such agreement that occasioned any change in law, including technical and typically noncontroversial changes to our tariff schedule, would have to be approved by the Congress.

The prospect of nearly continuous consideration of trade agreements by the Congress also raises the possibility of delaying the entry into force of agreements beneficial to the United States. For example, the Hollings amendment could greatly delay—and perhaps jeopardize—recent agreements that:

Eliminate tariffs on 400 pharmaceutical products shipped to key markets around the world (these tariff cuts had been widely

sought by our medical community because of their potential to quickly lower the costs of producing anti-AIDS drugs and other life-saving pharmaceuticals);

Cuts $5 billion in global tariffs on semiconductors, computers, telecommunications equipment, software, and other information equipment (these are tariff cuts that directly benefit high-technology products made by some of our most highly competitive industries, and that support 1.5 million manufacturing jobs and 1.8 million related services jobs); and

Open the global market for basic telecommunication services, providing enormous benefits to our dynamic U.S. telecommunications industry.

If the Hollings amendment were applied to these agreements, they would have to be submitted to Congress for review and approval. Yet each of these agreements was negotiated under congressional authorization and in close consultation with Congress, and each enjoys overwhelming industry support.

Mr. McCAIN. Mr. President, I will not go through the whole statement of administration policy except to say the administration strongly supports the resolution which will authorize the appointment of Charlene Barshefsky as U.S. Trade Representative. Among other things it says:

The Hollings amendment could require congressional approval of every trade agreement that might be construed to require changing U.S. law. The amendment is unnecessary to assure the executive branch is conforming to congressional mandates on trade negotiations, is overly burdensome for both the President and Congress, and could endanger the benefits to the United States of some trade agreements.

The prospect of nearly continuous consideration of trade agreements by the Congress also raises the possibility of delaying the entry into force of agreements beneficial to the United States. For example, the Hollings amendment could greatly delay—and perhaps jeopardize—recent agreements that eliminate tariffs on 400 pharmaceutical products shipped to key markets around the world * * * cut $5 billion in global tariffs on semiconductors, computers, telecommunications equipment, software * * * open the global market for basic telecommunication services, providing enormous benefits to our dynamic U.S. telecommunications industry.

Mr. President, what does the Washington Post say about it? It says:

The Telecommunications Deal. After 3 years of tough negotiations, the world's leading economies have reached a landmark agreement to liberalize trade in telecommunications services. Acting U.S. Trade Representative Charlene Barshefsky, who led both sets of talks, predicted the U.S. information technology industry will now lead the growth of the U.S. economy as the car industry did 40 years ago. This wasn't a traditional agreement in which one country grudgingly agreed to accept textile imports, say, in order to gain access for its tomato exports. Instead, every nation involved acknowledged the benefit to itself of liberalization and deregulation of the model that the United States and Great Britain have pioneered. Half the world's people have never made a phone call. Poorer countries, where most of them live, will attract the investment that they need only if they play by these new rules of openness and competition.

The Washington Times:

Teleco Mania. For the second time in three months, tough minded and determined U.S. trade negotiators under the auspices of the 2-year-old World Trade Organization have hammered out a multinational high tech trade agreement that will be immensely beneficial to firms and workers based in the United States and consumers worldwide.

The list goes on and on, Mr. President, of the almost universal praise of this landmark agreement that Ms. Barshefsky has been able to achieve. Frankly, there were a lot of pessimists who believed that she could not do that. I believe she is well qualified for the job. President Clinton referred to Ambassador Barshefsky as a brilliant negotiator for our country. She is a tough and determined representative for our country, fighting to open markets to the goods and services produced by American workers and businesses.

I will not go through her qualifications, Mr. President, in the interest of time because they are illustrious.

Her foresight and depth of understanding of our country's international trade relations are essential to our Nation's continued economic growth. She is exceptionally qualified, and I am sure that the full Senate will join me in confirming her nomination to be the U.S. Trade Representative.

From financial services to Japanese insurance to global telecommunications, Ambassador Barshefsky has proven herself to be a tough negotiator. For example, in April of 1996, as one of her acts as USTR, Ambassador Barshefsky walked away from the poor efforts made under the auspices of the World Trade Organization regarding basic telecommunications services. She made everyone come back to the table and last month concluded the WTO's basic telecom agreement which represents a change of profound importance. A 60-year tradition of telecommunications monopolies and closed markets will be replaced starting in January 1998 by market opening, deregulation and competition, the principles championed here by many of us for a long time.

Senator HOLLINGS has concluded that the recently announced telecommunications agreement of the World Trade Organization would change U.S. statutory law. Not only do I disagree, but as I mentioned, the Senator finds himself on the other side of the argument with President Clinton.

Mr. President, I ask unanimous consent that written responses to questions from Senator LOTT and Senator KERREY be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR LOTT

TELECOMMUNICATIONS

Could you please explain in greater detail the administration's position that no implementing legislation, or legislation of any kind, will be required for the telecommunications agreement currently under negotiation in Geneva.

The U.S. offer will reflect our statutory obligations. While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity. The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310 (a) and (b)(1), (2) and (3) of the Communications Act of 1934 (the "Act"). The offer specifically states that foreign governments, aliens, foreign corporations and U.S. corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license.

Based on Section 310(b)(4) of the Act, the offer places no new restrictions on indirect foreign ownership of a U.S. corporation holding a radio license. Section 310(b)(4) allows such indirect foreign ownership unless the Federal Communications Commission finds that the public interest will be served by the refusal to grant such a license. The U.S. offer is to allow indirect foreign ownership, up to 100%, under this provision.

The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest. Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U.S. market. In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services.

The U.S. offer maintains COMSAT's monopoly on access to INTELSAT and Inmarsat, as required by the Communications Satellite Act (47 U.S.C. 721).

The offer does not contain any restrictions on licenses to land submarine cables based on the statutory authority of the President (delegated to the Federal Communications Commission in consultation with the Secretary of State) to issue landing licenses. The statute permits withholding such licenses to assist in obtaining landing rights in other countries maintaining the rights or interests of the United States and its citizens and protecting U.S. security (47 U.S.C. 35). The United States will obtain landing rights in other WTO member countries if the negotiations conclude successfully and will retain its ability to protect its national security.

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR BOB KERREY

TELECOMMUNICATIONS

Last April when the parties agreed to postpone the deadline for negotiations in the GBT, the U.S. offer did not reflect the statutory language under sections 310 (a) and (b) that the foreign ownership limitations under the law apply to "foreign governments or their representatives." Does USTR intend to modify the U.S. offer to adhere to the statutory language of sections 310 (a) and (b)? If not, why?

The U.S. offer will reflect our statutory obligations. While at this time we do not believe its implementation will require any legislative changes, we are continuing to consult with Congress on this issue.

The offer allows market access to the local, long distance and international services markets through any means of network technology, either on a facilities-basis or through resale of existing network capacity. The U.S. offer limits direct foreign investment in companies holding common carrier radio licenses, as is required by Section 310 (a) and (b) (1), (2) and (3) of the Communications Act of 1934 (the "Act"). The offer specifically states that foreign governments, aliens, foreign corporations and U.S. corporations more than 20% owned by foreign governments, aliens or foreign corporations may not directly hold a radio license.

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The U.S. offer permits a foreign government indirectly to own a radio license, unless the FCC finds that such ownership is not in the public interest. Under the public interest test, the FCC looks at many factors, such as financial and technical ability of the applicant, international agreements, national security concerns, foreign policy concerns, law enforcement concerns and the effect of entry on competition in the U.S. market. In the event of a successful conclusion to these negotiations, the U.S. offer will allow the FCC to continue to apply these public interest criteria, as long as they do not distinguish among applicants on the basis of nationality or reciprocity, consistent with the obligations of the General Agreement on Trade in Services.

The Administration is continuing to consult with Congress and the FCC to determine whether it would be helpful to modify the U.S. offer to include any additional parts of the statute's text in the offer's text.

In the alternative, if USTR does modify its offer, please cite what precedent gives USTR the authority to hold that the exception under the public interest waiver of section 310(b)(4) vitiates the statutory limitation of control by a "foreign government or the representative thereof" under 310(a), which has no waiver?

Section 310(a) prohibits direct ownership of a radio license by a foreign government or its representative. Similarly, Section 310(b)(1) prohibits direct ownership of a radio license by an alien or its representative. Section (b)(2) contains the same prohibition for foreign corporations. Section 310(b)(3) prohibits direct ownership of more than 20% of a U.S. corporation holding a radio license by a foreign government, an alien or a foreign corporation. All these prohibitions on direct ownership are contained in the U.S. offer.

Section 310(b)(4) explicitly allows indirect ownership by all three—a foreign government or its representative, an alien or its representative or a foreign corporation, unless the FCC determines that such ownership is not in the public interest. This is also reflected in the U.S. offer. In preparing the offer, the Administration has consulted closely with Congress and FCC staff and is continuing to consult on the question of implementing legislation and whether to modify the offer.

If USTR successfully negotiates an agreement, would there be any change or limitation on the FCC's use of the Effective Competitive Opportunities test to examine the openness of a foreign market, which it adopted pursuant to the public interest waiver test of section 310(b)(4)?

If the GBT concludes successfully, the FCC will continue to apply the public interest test to applicants under section 214 and to applicants for radio licenses under section 310. The only change that would occur would be that the Executive Branch would advise the FCC not to consider reciprocity as a prong of the test on the basis that the U.S. would have obtained substantial market access commitments from its major trading partners and the vast majority of countries whose carriers are likely to apply for radio licenses in the U.S.

Mr. MCCAIN. Mr. President, the reason why I ask that is because there are many technical and legitimate questions that are raised by Senator LOTT, Senator KERREY, and by Senator HOLLINGS. The responses that Ambassador Barshefsky made, I think, are important to be in the RECORD. I will not take the time of the Senate to read those.

The amendment, I believe, is not only not good for America, but I believe that the amendment represents a different view of trade and how nations should treat each other in this world competitive marketplace. I believe that the American worker can compete with any worker in the world. I believe that the American worker is the finest in the world. I would rather have an American working to build a product than any other nationality, without any disrespect to any of them. With that fundamental belief that American workers can compete and do a better job, then I am in favor of reducing the barriers, which the agreement that Charlene Barshefsky has negotiated will accomplish.

Telecommunications is a $600-billion-a-year industry. The World Trade Organization's basic telecom agreement will double the size of the industry over the next 10 years. There is not a single telecommunications business in America that does not totally support this agreement. The agreement will lead to the creation of countless jobs in U.S. communications companies, in high tech equipment makers, and in a range of industries such as software, information services and electronic publishing that benefit from telecom development.

This agreement is literally unprecedented. It covers over 90 percent of world telecommunications revenue and includes 69 countries, both developed and developing. It ensures that U.S. companies can compete against and invest in all existing carriers. Before this agreement, only 17 percent of the top 20 telecommunications markets were open to U.S. companies. Now they have access to nearly 100 percent of these markets.

The range of services and technologies covered by this agreement is breathtaking—from submarine cables to satellites, from wide-band networks to cellular phones, from business internets to fixed wireless for rural and underserved regions. The market access opportunities cover the entire spectrum of innovative communications technologies pioneered by American industry and workers.

Most important, the agreement will save billions of dollars for American consumers. The average cost of international phone calls will drop by 80 percent, from approximately $1 a minute on average to 20 cents per minute over the next several years. The agreement, as I said earlier, was widely lauded by those in the telecommunications industry.

Mr. President, of equal concern is the impact this amendment would have on the ability of the President to negotiate future trade agreements. The Hollings amendment could require congressional approval of every single trade agreement that might result in any change in regulations or administrative practice, no matter how slight the change. The overwhelming majority of trade agreements that the President concludes can be—and traditionally have been—implemented under statutes that the Congress has already put on the books. If the President tries to implement an agreement in a manner that is not provided for under legislation, the courts can prohibit him from taking those steps.

The amendment is harmful to our Nation's trade interests. The approval requirement imposed by the amendment would impose long delays and could create uncertainties for lucrative trade agreements that would otherwise bring immediate benefits to American consumers, firms and workers. It is the American workers who would be hurt by this amendment.

Under Senator HOLLINGS' amendment, the President could not use the powers already granted him if he intends to make any change in regulatory or administrative practice, no matter how insignificant. This amendment would require an act of Congress every time the President allocates a new cheese or sugar quota, adds a quota on a textile or apparel product, or implements a tariff rate quota on agricultural products, such as those recently negotiated on imported goods such as tobacco. The President has traditionally made these routine changes under proclamation authority granted by the Congress.

Finally, Ambassador Barshefsky will also have a busy coming year. It is my hope that she will move quickly to send the Congress legislation to provide for a clean reauthorization of fast-track authority so negotiations can begin immediately to expand the North American Free Trade Agreement to Chile. Pending successful expansion of NAFTA, negotiations should continue

on the development of a free trade area of the Americas.

Substantial questions will also arise regarding extension of MFN status to China and the accession of China into the World Trade Organization. I am confident that Ambassador Barshefsky is up to these challenges.

Mr. President, the United States has historically been a world leader in opening markets and expanding trade. I believe leadership waned over the first term of the Clinton administration. It is my hope, and, indeed, my prediction, that under the leadership of Charlene Barshefsky, the United States will again take its place as the world leader for open and fair trade.

I urge my colleagues to oppose the Hollings amendment and support Senate Joint Resolution 5 so that Ambassador Barshefsky can be confirmed and appointed to serve as our next U.S. Trade Representative.

Mr. President, I regret there is not time, but there will be opportunities in the future to debate these issues with my friend from South Carolina, who I have said on many occasions is not only enlightening but on occasion entertaining as well, which makes for spirited and involved debate.

Mr. President, I yield the remainder of my time back to Senator ROTH.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized for 5 minutes.

Ms. COLLINS. Mr. President, I rise today to support the nomination of Charlene Barshefsky to be the next United States Trade Representative. In representing a State with a long history of trade with Canada, I have taken particular interest in President Clinton's nominee for USTR.

I have had serious concerns about this administration's lack of aggressiveness in pursuing the concerns of Maine's farmers and businesses regarding unfair trade practices by neighboring Canada. Canada is Maine's No. 1 trading partner, and Mainers value this relationship, but we want it to be a fair relationship. When evidence is found that trading practices are not fair, the United States needs to take strong and effective action.

To underscore my concern about this problem, I withheld my support for Ambassador Barshefsky until I had an opportunity to meet with her to discuss several trade issues important to the people of my State. Farmers, fishermen, and others in natural resource industries have long been concerned about unfair trade practices by the Canadian Government.

Maine potato farmers, in particular, have labored under trade practices that have threatened the very survival of some farms. Particularly troubling are apparent subsidies from the Canadian Government that allow Canadian farmers to sell their products at artificially low prices, thus enabling Canadian farmers to dump large volumes of potatoes into the American market. At the same time, there is concern that Canadians may be erecting trade barriers that make it difficult for our farmers to sell their products in Canada.

We cannot continue to tolerate Canadian trading practices that adversely affect Maine potato farmers, who have seen more than their share of hard times. However, I am encouraged by Ambassador Barshefsky's recent actions, which include asking the International Trade Commission to undertake an investigation to determine the nature and extent of Canadian potato subsidies. This is a step in the right direction and a good sign that these issues will finally get the attention they deserve. But it is only a first step. It is critical that the administration follow through and take action to assure a level playing field.

Another issue I raised with the Ambassador was the frustration of some Maine shellfish companies with newly instituted inspection fees on shellfish products exported to Canada. Maine shellfish exporters have been concerned that the Canadians are unfairly targeting their products for inspection in an attempt to make it more difficult for Maine shellfish to be shipped to Canada. On this issue I found the Ambassador to be very responsive. She has been helpful with gathering information, and I am pleased USTR officials have begun meetings with their Canadian counterparts to review these onerous fees.

Finally, I also raised the issue, which the distinguished Senator from South Carolina has talked about, and that is the issue of the U.S. tariffs on capacitors. As part of the Information Technology Agreement negotiated in Singapore last year, the administration agreed to a European proposal to eliminate the current 9 percent tariff on capacitors entering the United States. Under the agreement, the tariff would be eliminated in July of this year.

The elimination of this tariff could pose a serious hardship on several American companies, one of which is in my State of Maine. The Ambassador and I discussed this hardship, and I made the case that the industry was unaware of even the potential that this tariff could be eliminated. I asked what measures could be taken to provide some relief.

I was impressed with the Ambassador's knowledge on this issue, and I was very encouraged by a commitment she made to me to find middle ground with the Europeans that would give American manufacturers of capacitors more time to adjust to a tariff elimination.

Specifically, we talked about the possibility of having a phaseout of the tariff, rather than the abrupt elimination in July.

In closing, I would like to address the issue of the need to waive a provision passed last Congress as part of the lobbying disclosure act. This provision prohibits the appointment of any person who has represented a foreign government in a trade dispute with the United States from serving as USTR or deputy USTR. Like many of my colleagues, I was very concerned about the need to exempt someone from a law that is on the books and has been passed so recently. Since the foreign country involved is Canada, I was particularly concerned because of the contentious trading relationship that my State has had over the years with Canada on many important products. However, after addressing this issue with Ambassador Barshefsky, I learned that she was previously exempted from this provision in her capacity as deputy USTR. It, therefore, does seem reasonable to me to allow this waiver to follow her into her new duties as USTR, and I agree with the Finance Committee's unanimous recommendation to waive the law.

I am pleased to have had the opportunity to meet with Ambassador Barshefsky and her staff to discuss these important issues. They are critical issues to my constituents. I found her to be very knowledgeable and responsive. I am hopeful that her tenure as USTR will bring about renewed interest, commitment and, most of all, action on trade issues confronting the people of Maine.

I appreciate the distinguished chairman of the Finance Committee yielding me time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 15 minutes to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 15 minutes.

Mr. ROCKEFELLER. Mr. President, I rise to express my extremely strong, very enthusiastic support for the nomination of Charlene Barshefsky to be our U.S. Trade Representative. This is an important vote for America, for its future. I urge my colleagues to give her the unanimous vote of confidence that she has, in fact, already earned through her record of incredible fortitude, ability, and a long list of trade accomplishments, even as acting USTR.

The President has put forward, frankly, a most unusual person—unusually skilled, highly qualified, for one of the most important jobs in the U.S. in Government, and that is being our Nation's lead trade negotiator and keeping up with all developments all over the world all the time. It is an incredible job.

She now should have the official title to proceed with the job awaiting her in trade negotiations and efforts that offer immense opportunities and extremely high stakes for our industries, for our workers, and for our economy.

In just the last year alone, on a whole host of other things, as our acting trade representative, Charlene Barshefsky has concluded a renewal of our critical semiconductor agreement with the Japanese; seen through an agreement to remove tariffs around the world on information technology products; and won agreement of a massive telecommunications pact that promises more than $1 trillion in worldwide economic benefits through the year 2010, all of this as acting trade representative.

Beyond that, I would point to one of Charlene Barshefsky's strongest qualifications: Her masterful grasp of complicated issues surrounding China's integration into the global economy.

We have all read, hopefully, all of the writing that has come out about China since the death of Deng Xiaoping. I believe that China is the single biggest long-term macroeconomic challenge facing the United States. We cannot duck it. We must handle it intelligently.

China is the world's largest country, in terms of population, and its economy will surpass ours sometime in the not too distant future. If its accession to the World Trade Organization, in particular, is not handled properly, the ramifications for the United States could be serious and long lasting. This takes the hand of a master. That hand belongs to Charlene Barshefsky.

We are also very fortunate to count on Ambassador Barshefsky as we face the challenge of our trade relationship with Japan. This winter I took, as I always do, a delegation of West Virginia business people to Japan and Taiwan. One of the messages we heard, in a troubling fashion very frequently, was that Japan was looking much more toward turning to the World Trade Organization for the settlement of previously negotiated bilateral trade agreements, turning, therefore, away from the bilateral process which has traditionally characterized our negotiating relationship with Japan.

I don't blame them if they are trying to avoid a U.S. negotiating team headed by somebody as forceful and capable as Charlene Barshefsky. My response is that overall United States-Japan relations depend on our ability to deal with one another, on a bilateral basis, on our trading issues, and then have occasional recourse to the WTO, but none of this could we do any better than by having Ambassador Barshefsky at the helm representing our country, our people, the people from my State.

It is impossible for me to explain how strongly I feel about the nomination and the confirmation of that nomination hopefully on this day.

To turn to the amendment we are now debating, the Senator from South Carolina is one of the most forceful advocates in the Congress for American interests in the global economy. I learned a great deal about issues coming from discussions with him about the globalization of the economy. He talks about it a great deal with great erudition, and I admire and share his intense commitment to American workers and industries.

The Senator from South Carolina also has a very long-time interest in the issue of foreign ownership of American telecommunications services, which, in fact, happens to be the root cause of the Senator's amendment, although this dispute is not about broadcast rights but about telecommunications services—not about broadcast rights but about telecommunications services—like cellular or international calling.

Clearly, there is a difference of opinion about what U.S. law allows in the area of ownership of telecommunications services. This is a difference of opinion, not only between the Senator from South Carolina and USTR, but between the Senator and something called the Federal Communications Commission, which he declines to recognize on this matter.

The Senator, as the former chairman of the Commerce Committee and the ranking member now, also disagrees with the current chairman of the committee, Senator JOHN MCCAIN, who has just spoken, as well as the chairman of the House Commerce Committee, Mr. BLILEY, over this law.

As I understand it, the U.S. offer in the telecommunications agreement tracks U.S. law, meaning this dispute is really over the interpretation of current U.S. law by the FCC, which the ranking member of the Commerce Committee does not like, not the trade agreement reached by USTR.

I thoroughly agree with the Senator from South Carolina that Congress must assert its constitutional right and responsibility to oversee international trade and international commerce, and I am in full agreement Congress should act when a trade agreement makes commitments that differ from current law. But that is already the law of the land. That exists now under the current law.

If a trade agreement reached by the executive branch requires a change in law, Congress must act to implement the agreement. When the President agreed to the Uruguay round, Congress had to pass implementing legislation for us to meet its terms, which we did. However, to cite another example, when the President agreed to the shipbuilding agreement at the OECD, Congress did not agree to change American law to implement that particular agreement.

As somebody who, like the former chairman and ranking member of the Commerce Committee, opposed NAFTA as I did, I am certainly not saying that we should signal that this or any other administration has a blank check to make trade agreements that are not in America's interest. But that is not what the amendment of the Senator from South Carolina is about. This amendment would create a whole new role for Congress that could have a chilling effect—would have a chilling effect—on trade negotiations that, in fact, seek to serve and strengthen U.S. interests, which he talks about.

My problem with the Senator's amendment is that it would do much more to reaffirm Congress' role in responding to trade agreements that require a change in our laws. By using the language in the amendment which says that any trade law which would—and then the keywords are—"in effect amend or repeal statutory law," I am afraid it would entangle Congress in a constant, complicated, unnecessary process of acting on trade agreements that do not embody actual changes in U.S. law and don't require congressional involvement to obtain the benefits of those agreements.

I respect the fact that the Senator questions a part of the new telecommunications trade agreement negotiated in Geneva. Disagreements between members of the legislative branch and executive branch are very common, even on an intraparty basis. But we have existing procedures to resolve disputes like that when they come up. A challenge can be taken up with the courts or something called legislation can be offered to change the particular practice in dispute.

The problem with the amendment of the Senator from South Carolina is that instead of proposing a specific change of law, which addresses his interpretation of the law affecting ownership of telecommunications services, he is proposing a new, generic, far-reaching role for Congress that could affect nearly all future trade agreements.

For example, USTR recently concluded an agreement which would eliminate tariffs that were on some widely sought after anti-AIDS drugs. Under current law, this could be put into effect—under current law—in 60 days under Presidential proclamation authority. However, if the Hollings amendment were to pass, such routine and noncontroversial changes would require a new act of Congress that could mean waiting months or maybe even watching the benefits of this trade agreement never materialize.

The amendment by the Senator from South Carolina calls for a major shift in U.S. trade policy. It has not been discussed or considered in the Finance Committee, which has jurisdiction over all reciprocal trade agreements.

Finally, even if all these questions could be answered, the House has already said that they will "blue slip"

the waiver resolution if it contains this amendment, because it goes against the constitutional provision that all measures which affect revenues must originate in the House of Representatives. So this amendment on the waiver resolution would doom the underlying nomination, and Charlene Barshefsky is too good a nominee to see that happen.

With respect for my colleague from South Carolina, I strongly urge my colleagues to vote against his amendment. This is not the way, not the time, nor the policy to use in resolving the Senator's dispute over a specific provision of a specific trade agreement. That disagreement should be pursued through other avenues that all of us use on a very regular basis. In this case, the amendment would establish an entirely new process, a new law, a new role for Congress regarding all trade agreements. It is a role that is unnecessary and could prevent our trade negotiators from doing the kinds of work that we charge them to do in representing our best interests.

Rarely, if ever, have I seen an international agreement that has virtually no opponents in either the business community or from American workers. Usually, people point to winners and losers in international trade agreements. Sometimes people are afraid they could lose their jobs, or they feel that their business could be disadvantaged relative to their competitors. But on this Telecom agreement, notwithstanding the objections of the Senator from South Carolina and a couple of others, I've heard barely a peep.

This international telecommunications agreement truly breaks new ground. For the first time ever, an international trade agreement effectively guarantees competition. The United States put forward regulatory guidelines modeled on our own telecommunications law, and 65 countries agreed to adopt most, if not all, those procompetitive principles. That is extraordinary.

This agreement between 69 countries will open nearly 95 percent of the worldwide telecommunications services market to competition. A market which will exceed $600 billion in gross revenues this year alone. Mr. President, I'd point out that in April of last year, Charlene Barshefsky walked away from the talks when only 40 countries had made offers, representing only 60 percent of global revenues.

Included in this agreement are local, long-distance, and international calling services; submarine cables; satellite-based services; wide-band networks; cellular phones; business intranets; and fixed wireless services for rural and underserved regions. What this agreement did not cover are broadcast services.

It is believed that competition by telecom service providers is expected to lead more than $1 trillion in economic benefits for consumers around the world through 2010. While U.S. consumers have already reaped much of the benefit of deregulation and increased competition, the FCC has pointed to billions of dollars of savings from this deal for American consumers due to the eventual lowering of costs for international calling by 80 percent—from more than $1 per minute to less than 20 cents—the actual cost of placing such a call.

I'll admit that I am disappointed that some countries, such as Japan, Korea, and Canada, didn't offer to open up their markets quite as much as the United States did, but reaching this agreement doesn't in any way prevent us from further negotiations with them in this area.

I'd also point out two things. First, even though these countries, and some others, maintained limits on purchasing existing providers, in most cases, American firms can still go in to those same countries and compete on their own—and the regulatory principles will guarantee that they are not blocked from connecting to existing telecommunications networks.

Second, if it is Japan we are talking about, the idea that anyone plans to purchase more than 20 percent of NTT any time soon, is ridiculous. NTT is the world's largest company, worth well over $100 billion—I'm told that 20 percent would cost about $23 billion. Right now, 3 percent of NTT is owned by foreigners, and I haven't heard that anyone plans to buy much more than that. What American firms are talking about is the chance to start or invest in new common carriers in Japan, such as Japan Telecom, which is connected to the Japanese Railroad, and which anyone can invest in with no limitations. I'll admit that I am concerned with the 20-percent limitation on KDD, which is a much smaller company than NTT—about the size of one of our Baby Bells, but I'm hopeful we can work this out in future negotiations.

To conclude, today we have finally reached the moment to extend the title of United States Trade Representative to somebody who I think is magnificently qualified to take that job. Superb qualifications, superbly tested, and now prepared to advance America's interests even further. What we are going through today threatens to block her, which hurts her in China, which hurts her in Japan, which hurts her all over the world, and therefore through hurting her, our interests.

So I urge the unanimous vote that she deserves, that she be made Ambassador, the granting of the Dole waiver that is required, and the defeat of the amendment that does not belong here and has consequences that could truly harm, not help, American interests. I yield the floor and thank the distinguish Finance chairman.

Mr. BYRD. Mr. President, I strongly support the adoption of the amendment introduced by the senior Senator from South Carolina [Mr. HOLLINGS]. On the face of it, it is a straightforward, simple proposition that attempts to preserve the integrity of the laws that we pass, and that are the subject of discussion and/or negotiation between the United States and other nations. It says that if our Executive branch negotiators reach an agreement which amends or repeals U.S. law, that agreement may not be implemented until the agreement is approved by the Congress. Who could dispute such an obviously valid proposition?

The case at hand, the negotiation of a new telecommunications services agreement, apparently effects changes in U.S. law dealing with access to the U.S. market in relation to the access of American companies into foreign markets. This is a matter which was very controversial in connection with the consideration of the landmark Telecommunications Act of 1996. In working with the Commerce committee on this legislation, I was involved in developing certain changes to section 310(b) of the underlying statute dealing with foreign ownership. The matter was so controversial that the conferees on that legislation were unable to reach agreement, and changes to the foreign ownership provisions were dropped from the final conference agreement.

It is all the more important that our negotiations, in the light of the controversial nature of this matter, take care not to effect what amounts to a change in the law by virtue of negotiating a provision of an international agreement without taking the role of the Congress into account. The law and an agreement should not be put into conflict on such a matter, and Senator HOLLINGS is right to insist that no such negotiated change should be implemented until the Congress has agreed by amending the law which governs the situation.

Mr. HATCH. Mr. President, I support the joint resolution before us waiving certain provisions of the Trade Act of 1974 relating to the nomination of Ambassador Barshefsky to the position of United States Trade Representative.

Let us make no mistake as to the quality of Ambassador Barshefsky's service. We are not simply endorsing her as an exception to the act. Rather, she could not be more deserving of confirmation. Let's examine her record.

Her service has been marked by substantive accomplishments on an unprecedented scale. Over 200 trade agreements have been enacted, and she has been in the middle of the dispute process for the most difficult of all—the Chinese anti-piracy agreement—and more than 20 separate agreements with the Japanese in such areas as auto parts, telecommunications, government procurement, semiconductors,

and medical equipment and technology. Many of her accomplishments have directly benefited my State of Utah which, despite its small size, is one of the Nation's leading exporters of technology and software.

Like many other members of the Senate Finance Committee, I have been inundated by letters from hundreds of Barshefsky supporters. This outpouring of support underscores my own impression, as I expressed at the recent Finance Committee hearing, that she is a most qualified nominee for U.S. Trade Representative.

But let me draw attention to one particular comment regarding her success in the Chinese trade negotiations. I refer to a statement from the Recording Industry Association of America, a sector that has been especially hard hit by Chinese intellectual property piracy. In his recent letter to me, RIAA chairman and CEO, Jay Berman, reported, "I personally witnessed her negotiations with China in June, 1995, that led to the immediate closing of 15 pirate CD [compact disc] plants."

She has been repeatedly credited with breakthroughs in other sectors as well.

As my good friend from Delaware said only moments earlier, she has vastly expanded market access for American business—in Asia, Latin America, and Europe. More importantly, her work will be seen as an advent to still another American century, a century that will be marked by rising prosperity everywhere.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Delaware.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROTH. Mr. President, I have a unanimous-consent request which has been cleared with the minority. I ask unanimous consent that following the allotted times for debate, the Senate proceed to a vote on or in relation to the Hollings amendment No. 19: Senator HOLLINGS 9 minutes, Senator CONRAD 5 minutes, Senator DASCHLE 10 minutes, Senator BURNS 6 minutes, Senator ROTH 5 minutes; and immediately following that vote the joint resolution be read a third time and the Senate proceed to a vote on passage of Senate Joint Resolution 5; further, if the resolution passes, the Senate then proceed to executive session and immediately vote on the confirmation for the nomination of Charlene Barshefsky. I further ask unanimous consent that prior to the second and third vote there be 2 minutes of debate equally divided in the usual form.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise to briefly address two questions: No. 1, the question of a waiver for Ambassador Barshefsky; and, No. 2, the approval of Ambassador Barshefsky as our trade representative.

Mr. President, I represent the State of North Dakota. We are right next to Canada. The question of a waiver for Ambassador Barshefsky relates to the question of her previous representation of Canada on trade issues, and that requires a waiver if she is to become our trade representative.

Mr. President, anyone who has worked with Ambassador Barshefsky understands her full commitment and dedication to the trade interests of the United States.

My State has been involved in a longstanding dispute with Canada with respect to unfairly traded Canadian grain coming into this country at below their cost and having a devastating effect on the farmers of my State, not only the producers in North Dakota but farmers in Montana, farmers in South Dakota, Minnesota, Kansas, Nebraska. Charlene Barshefsky has stood with us shoulder to shoulder to get a fair result.

Mr. President, this issue first came up when she was approved as the Deputy USTR 4 years ago. She has done a superb job in her position at the trade representative's office. I think anybody who has followed her career and watched the job she did in negotiating to open up Pacific rim countries to our trade, the job that she has done fighting for U.S. interests in trade disputes with Canada, that she represented for a brief time on limited issues when she was in the private sector, would understand there is no reason—none—to deny a waiver to allow Charlene Barshefsky to become our trade representative.

Mr. President, Charlene Barshefsky is superb. I have dealt with many trade representatives. Rarely does one find someone of her background, her intelligence, her talent and her commitment. Those are qualities that we want working for the United States in these very difficult trade negotiations. And she has shown her mettle over and over and over. I urge my colleagues to vote for the waiver and to vote for Charlene Barshefsky to be our next trade representative. I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank the Chair and I thank my friend from Delaware.

I rise today with some concerns about the new trade representative, Charlene Barshefsky. But I also rise to support her nomination. She has proven herself to be a tough negotiator as the acting trade representative. She recently played a major role in the opening of foreign markets in telecommunications, an agreement which we hope will decrease the costs of international calls and likely to have similar impact on domestic rates as well as U.S. companies competing on a worldwide basis.

But on the other hand, Ms. Barshefsky's bidding on the administration's behalf of NAFTA to expand into some South American countries has me somewhat concerned.

There is nobody in this body who fights harder for his people than the Senator from South Carolina. And I think I know why, because I visited that State one time, and he walks among those people who have lost their jobs in textile mills and understands those people's pain.

We are now suffering that kind of a pain because of the border wars with Canada in the State of Montana. Whenever you start talking about fast tracking authority to expand NAFTA, and you understand the effect NAFTA has had on us in the beef industry and the grain industry—and that is what I am; I am not anything else fancy—then I say we have to approach that very cautiously, because I am not going to lower the living standards of my farmers for the sake of so-called free trade unless it is fair trade. If left unchecked, it will also contribute to the devastation of other sectors in our Nation's economy as well, if we do not just look at some of these things.

We live in a free economy, we live in a global economy. I admit while Canadian livestock producers reap the benefits of new profit markets, Montana producers are hit with a flood of imports at the same time that the cattle market is already at the bottom of its scale. So we cannot afford any more of this. To stem that, we will have to do it through enabling legislation.

I say that the pending amendment is one that has to be discussed among the FCC, keeping in mind that the final rule of last year's telecom bill has not been written yet. So, I have some very strong concerns about the expansion that this President and this administration want to take. We see loaded trucks with cattle going through Montana, and we say, are they stopping here? And they say, no, they are going south. We lost the Mexican market, plus we lost some of our own markets through the last little deal. We got snookered a little bit talking about NAFTA.

I oppose any kind of fast track as far as the expansion of NAFTA is concerned because I think it has to be done the right way. I voted against it the first time, understanding where the Senator from South Carolina and the Senator from Montana were coming from, and I will probably, unless we have a mechanism we can work out these troubles that we have, playing on a level playing field, I am saying right

now that if you want to ship cattle into the United States, I want you to have the same rules and regulations, the same environmental laws as we have to comply with in this country. That is only fair.

If Ms. Barshefsky is a tough negotiator, I will stand beside her, but do not use agriculture as a pawn and then sell it out like we have in times past. One has to remember that agriculture is still the largest contributor to the GDP in this country. I will support her in the upcoming confirmation vote and hope that she works with us in Congress whenever negotiations of expansion get under way.

I yield back the remainder of my time.

Mr. HOLLINGS. Mr. President, let me acknowledge the one kind word we got this afternoon in this debate. The Senator from Montana is on target. He is right. We go home and we see the jobs not only created at the BMW's but we see the jobs that have been lost, and that retraining out of Washington will not suffice. I do appreciate it very much, and I agree with him. He brings it right to the fore, the straw man they have put up.

They talk fast track, they talk regulations, they talk the differences between broadcast and common carrier under the statute, as there being a distinction, and, of course, the most serious one they bring is the character of the lady herself, which I never would suggest anything otherwise, and is of the finest character as an individual, Ms. Barshefsky. That is not a debate.

She happens to say that you do not need any approval of Congress. Well, then, I ask, why did the previous man of character, and just as dazzling as Ms. Barshefsky, Mickey Kantor—and I inserted in the RECORD his request that we amend the law so he could agree on foreign ownership. Now she is saying there is not any agreement, and there are all kinds of straw men.

The junior Senator from West Virginia was saying there is a distinction here. I am talking about broadcast rights and television services. I put these two sessions in there, and it can be read, "No broadcast or common carrier license shall be granted to the foreign government" and on and on and on. It is crystal clear that there is no distinction. That is why none other than the Chairman of the FCC asked that it be changed.

So we really come to the floor after 2 to 3 years of asking for a change, not effecting the change, the 95 Members of the U.S. Senate voting and saying, all right, we agree that there be no change, and now they are all coming and saying, "Well, this is going to have a chilling effect," when the special trade representatives change the law and give away the store, the 100 percent ownership.

Heavens above, we cannot make it more clear to everyone. We read section 8, article 1, of the Constitution: "The Congress shall have power" and it goes on "to lay and collect taxes" and No. 2, to borrow money, and No. 3 "to regulate commerce with foreign nations." It does not say regulate foreign nations on a fast track. It does not say regulate commerce regulation laws. It says regulate commerce. These fellows could not have voted for the Constitution if they had been a forefather back in the founding days.

I never said anything about regulations. The Senator from Rhode Island came in and brought that up, and they keep on bringing up these straw men and talking about a complicated process. You could not make an agreement or anything else of that kind, having a chilling effect. The language is just as simple and constitutionally clear as you can possibly make it: "No international trade agreement," which is what we have in the telecommunications agreement "which would in effect remand or repeal statutory law"—I put the two statutes in that have been amended or repealed; not regulations or anything else or fast track and all the other things—"of the United States may be implemented by or in the United States until the agreement is approved by Congress." It says that is approved by Congress under its constitutional duty.

Now, there is absolutely a terrible misunderstanding about this so-called free trade. It is just like the crowd running around acting like they have revenues—the doubletalk on the budget. Everybody wants to cut the revenues, cut the revenues, taxes are too burdensome, cut the revenues, but "I want to balance the budget and I have a plan to balance it." How can they pay the bill by cutting the revenues? How can we possibly have free trade when we restrict the trade?

We say to that U.S. corporation, "Before you can do business, you have to have a minimum wage. You have to comply with the Social Security requirements for pension and retirement rights. You have to have Medicare requirements by the Finance Committee. You have to have clean air. You have to have clean water, plant closing notice, parental leave," and on down the list of all these requirements—OSHA, safety workplace, safe machinery. All these requirements that Congress put on and then say, "I have free trade." Well, you can go to Mexico and you do not have to have any of that. That is why we immediately ipso facto with that NAFTA agreement went from a plus balance of trade to a whooping negative, which they promised otherwise, losing all the jobs and wrecking Mexico and the United States.

Some question was raised about the Pacific rim. We have a deficit in the balance of trade with Indonesia of $4.1 billion. We have a deficit in the balance of trade with Japan of $47.5 billion. We have a deficit in the balance of trade with China of $39.4 billion. A deficit in the balance of trade with Malaysia, $9.4 billion. Taiwan is $11.4 billion. A deficit in the Philippines of $1.7 billion. A deficit in Thailand of $4.9 billion. A deficit in Singapore of $3.2 billion. And we can cite the European ones. I had them here on a list a minute ago. We know there is a deficit in Canada, and, yet, they talk about everything so magnificent. Let's rush over to China and get another agreement—quick. Heavens above, don't they understand that we are losing, we are not winning? This crowd around here act like they are accomplishing something.

Well, we have the Federal Republic of Germany, minus $15.4 billion; Venezuela, minus $8.1 billion; Italy, deficit and a balance, minus $9.4 billion. We can go right on down the list. It is all in all in all—I said the sum total of merchandise trade in deficit. That is, we bought manufactured goods. There is the great productive United States—not the workers. We know the workers are the most productive. That is why we got 100 German industries. That is why we have 50 Japanese industries. That is why we have, companies Michelin—I called on them 35 years ago, and now we got 11,600 jobs from France in my State. We are not talking about productivity. We are talking about the productivity of this Congress, this Government up here. We are the ones that are not producing. We are the ones that are not producing, chasing our tail around the mulberry bush, with independent prosecutors and investigations.

We know the problem is too much money in the game. Everyone has to skirt around this, twist this, turn that, and along goes the Supreme Court saying, soft money, you can do this and that and the next thing. So there we are. We are not producing here. We have $187 billion more than we bought in merchandise than what we sold. They keep on talking about exports, exports. So we are going out of business and nobody wants to talk about it. They bring up all these straw men about the complicated process, the chilling effect, new role for Congress—there is no new role. It is the only role that we have, a constitutional role. I think that we ought to just retain the balance of the time.

I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HOLLINGS. I retain the balance of my time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, we have had a great deal of debate on the Hollings amendment. So, in closing, I will be brief, but I want to make two simple points. First, no trade agreement—I emphasize "no trade agreement"—has the stature to supersede U.S. statutory law. If a trade agreement seeks to accomplish a result not in conformity with U.S. statutory law, the Congress must enact legislation to achieve that result.

Second, the amendment, whatever its merits, will cause Senate Joint Resolution 5 to be blue-slipped in the House if the amendment is agreed to. The only result that the amendment can accomplish is to derail the Barshefsky nomination. Make no mistake, I have a letter from BILL ARCHER, chairman of the Committee on Ways and Means. He says that, "Specifically, I understand that the Senate may be asked to consider particular provisions, such as one suggested by Senator HOLLINGS, which would change the manner in which Congress considers trade agreements and legislation having a direct affect on customs revenue. Although I strongly support Ambassador Barshefsky's nomination, I would have no choice but to insist on the House constitutional prerogative and to seek the return to the Senate of any legislation including such a provision."

So I urge my colleagues to vote "no" on the Hollings amendment. I yield whatever time I have to my distinguished colleague from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, the chairman and I have a letter we have just received from Charles F.C. Ruff, counsel to the President, and after the upcoming vote, we will vote on the resolution itself. He states:

Because the President strongly desires to appoint Ambassador Charlene Barshefsky as USTR, and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

I ask unanimous consent that the full text of the letter be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, March 5, 1997.

Hon. WILLIAM ROTH, *Chairman,*
Hon. DANIEL PATRICK MOYNIHAN, *Ranking Member,*
Senate Finance Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN ROTH AND SENATOR MOYNIHAN: I write to urge you to pass S.J. Res. 5 as quickly as possible without amendment. As you know, Section 21(b) of the Lobbying Disclosure Act of 1995 prohibits the President from appointing anyone to serve as United States Trade Representative (USTR) or Deputy USTR if that person had in the past directly represented, aided or advised a foreign government in a trade dispute or trade negotiation with the United States. Because the President strongly desires to appoint Ambassador Charlene Barshefsky as USTR and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

Sincerely,

CHARLES F.C. RUFF,
Counsel to the President.

Mr. MOYNIHAN. Mr. President, I yield the floor.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I have had the opportunity to listen to the debate this afternoon, and I appreciate and commend the participation of the distinguished Senator from Arizona and our ranking member on the Finance Committee, and certainly the chair of the Finance Committee, the Senator from Delaware, for their leadership on this issue.

I think it has been shown this afternoon that, as a representative of the United States in trade negotiations around the world, Ambassador Barshefsky has proven herself to be a tough and effective advocate of American interests. Her solid record of achievement has done much to level the playing field for American producers. She understands the challenges facing the United States in the world trading system. Her negotiating style combines careful preparation, great stamina, determination, and a willingness to exercise the leverage provided by U.S. trade laws when circumstances warrant it.

For example, as a key architect of the United States-Japan Framework Agreements, she used the leverage provided by tariffs on Japanese luxury car imports to gain better market access in Japan for American car manufacturers without penalizing consumers back home. Thanks, in part, to her efforts, exports of foreign vehicles to Japan have increased by 30 percent last year, and the number of American franchise dealer outlets reached near 20. American companies are making substantial investments in Japan and forging important new partnerships with Japanese business.

Ambassador Barshefsky has also demonstrated she appreciates the crucial role agriculture trade plays in the American economy. Last year, the trade surplus in agricultural products reached $28.5 billion, the largest of any industry. Still, as she has acknowledged to me, we could do far better. Annual surveys compiled by the Office of U.S. Trade Representative indicate that roughly half of the foreign trade barriers facing U.S. products are in the agricultural sector.

Persistent market access barriers and other unfair trade practices continue to be a source of concern, and although agricultural exports, as a whole, have risen, problems remain in many areas, including beef and cattle prices.

In my view, liberalizing world trade is part of the answer to problems in the agricultural economy. However, our negotiators must be prepared not only to seek new global agreements but also to ensure that individual trading partners comply with their market access commitments from previous ones.

Thankfully, in Charlene Barshefsky, we have found someone who understands this challenge. In recent years, she has worked to increase beef exports to Korea, increase the availability of fresh produce in Japan and China, and thwart European trade barriers that could have devastated American soybean and corn exports. There has been a 30 percent increase in the value of agricultural exports since 1994, and I am confident that we will continue to build on this progress under her leadership.

Ambassador Barshefsky has been widely praised and supported by industry leader in many sectors of the economy. Alfred J. Stein, chairman of the Semiconductor Industry Association and VLSI Technology Inc., has stated that "the President could not have found a more talented and dedicated envoy to represent the U.S. trade interest." John E. Pepper, Chairman of Procter and Gamble Company, has said that "Ambassador Barshefshy . . . represents U.S. trade interests in an aggressive yet diplomatic manner. The nation is fortunate to have [her] as our U.S. Trade Representative." Gary Hufbauer, a scholar at the Institute for International Economics, has described her as "easily the most qualified, most knowledgeable person on trade law ever nominated to this post."

In my opinion, Ambassador Barshefsky's experience, knowledge and tenacity make her the best person for the job. She has my full support, and I urge my colleagues to support her nomination and the proposed waiver from the Lobbying Disclosure Act.

The waiver is necessary because she performed a limited amount of work for Canadian interests while she was an international trade lawyer in private practice. Effective January 1, 1996, the Lobbying Disclosure Act bars anyone who previously represented a foreign government from being nominated for a senior USTR post. The Ambassador was exempted from this requirement during her service as Deputy USTR, and it is appropriate to "grandfather" her tenure as U.S. Trade Representative as well.

The distinguished ranking member of the Commerce Committee, Senator HOLLINGS, is proposing an amendment to the waiver that I must reluctantly oppose. I have sympathy for the issue he raises and might well support his efforts under different circumstances. However, the leadership of the body has expressed its firm opposition to Senator HOLLINGS' legislation, and House Ways and Means Committee Chairman ARCHER has indicated that he will seek to have any bill including the language "blue-slipped", or sent back to the Senate, on the grounds that it would constitute a revenue measure that must originate in the House.

For these reasons, adoption by the Senate of the Hollings amendment would almost certainly delay Ambassador Barshefsky's nomination for an unacceptably long time. The Senate has a responsibility to approve the President's Cabinet nominees as expeditiously as possible. Ambassador Barshefsky is a particularly fine choice, and, in my view, the Senate should not take any action that would delay her confirmation further. Accordingly, I must ask my colleagues to vote no on the amendment of the distinguished Senator from South Carolina.

Again, Mr. President, let me urge all Senators who support the nomination to support the joint resolution waiver to give Ambassador Barshefsky the kind of bipartisan support that her record, that her ability, that her intellect, and that her potential demand.

With that, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I move to table the Hollings amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Arizona to lay on the table the amendment of the Senator from South Carolina. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. SANTORUM). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 84, nays 16, as follows:

[Rollcall Vote No. 25 Leg.]

YEAS—84

Abraham	Bond	Burns
Akaka	Boxer	Campbell
Allard	Breaux	Chafee
Baucus	Brownback	Cleland
Bennett	Bryan	Coats
Bingaman	Bumpers	Cochran
Collins	Hutchison	Murkowski
Coverdell	Inhofe	Murray
D'Amato	Jeffords	Nickles
Daschle	Johnson	Reed
DeWine	Kennedy	Reid
Dodd	Kerrey	Robb
Domenici	Kerry	Roberts
Durbin	Kohl	Rockefeller
Enzi	Kyl	Roth
Feinstein	Landrieu	Santorum
Frist	Lautenberg	Sarbanes
Glenn	Leahy	Sessions
Gorton	Levin	Shelby
Graham	Lieberman	Smith (OR)
Gramm	Lott	Specter
Grams	Lugar	Stevens
Grassley	Mack	Thomas
Gregg	McCain	Thompson
Hagel	McConnell	Thurmond
Harkin	Mikulski	Torricelli
Hatch	Moseley-Braun	Warner
Hutchinson	Moynihan	Wyden

NAYS—16

Ashcroft	Faircloth	Kempthorne
Biden	Feingold	Smith (NH)
Byrd	Ford	Snowe
Conrad	Helms	Wellstone
Craig	Hollings	
Dorgan	Inouye	

The motion to lay on the table the amendment (No. 19) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The clerk will read the joint resolution for the third time.

The joint resolution was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senate will please come to order. There are 2 minutes equally divided.

The Senator from Delaware.

Mr. ROTH. Mr. President, before the Senate votes on Senate Joint Resolution 5, I want to reiterate the importance of passing this waiver. The waiver is essential.

Mr. FORD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator from Kentucky is correct. Senators will take their conversations to the cloakroom.

The Senator from Delaware.

Mr. ROTH. The waiver is essential to ensure that the President is able to appoint this capable nominee to the post of USTR.

I want to make just two points. First, when the Lobbying Disclosure Act was passed, Ambassador Barshefsky was serving as Deputy USTR. As such, the act expressly did not apply to her in that position.

Second, the Ambassador never lobbied the U.S. Government on behalf of a foreign government or foreign political party.

Under these circumstances, I strongly feel that passage of the waiver is appropriate to assure the appointment of Ambassador Barshefsky as USTR.

The PRESIDING OFFICER. The Senator from New York will suspend. The Senate will please come to order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, just to supplement the chairman's remarks, I would like to point out that he and I have received a letter today from Charles F.C. Ruff, Counsel to the President, stating:

Because the President strongly desires to appoint Charlene Barshefsky as USTR and in order to ensure the absolute propriety, without question, of her appointment, President Clinton will not appoint Ambassador Barshefsky until S.J. Res. 5 has been enacted.

I yield the floor and thank the Chair.

Mr. ROTH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the passage of the joint resolution.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced, yeas 98, nays 2, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—98

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Glenn	Mikulski
Biden	Gorton	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bryan	Hagel	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roberts
Byrd	Helms	Rockefeller
Campbell	Hollings	Roth
Chafee	Hutchinson	Santorum
Cleland	Hutchison	Sarbanes
Coats	Inhofe	Sessions
Cochran	Inouye	Shelby
Collins	Jeffords	Smith (NH)
Conrad	Johnson	Smith (OR)
Coverdell	Kempthorne	Snowe
Craig	Kennedy	Specter
D'Amato	Kerrey	Stevens
Daschle	Kerry	Thomas
DeWine	Kohl	Thompson
Dodd	Kyl	Thurmond
Domenici	Landrieu	Torricelli
Dorgan	Lautenberg	Warner
Durbin	Leahy	Wellstone
Enzi	Levin	Wyden
Faircloth	Lieberman	

NAYS—2

Allard	Lott

The joint resolution (S.J. Res. 5) was passed.

The preamble was agreed to.

The joint resolution, with its preamble, reads as follows:

S.J. RES. 5

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) became effective on January 1, 1996, and provides certain limitations with respect to the appointment of the United States Trade Representative and Deputy United States Trade Representatives;

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 does not apply to any individual who was serving as the United States Trade Representative or Deputy

United States Trade Representative on the effective date of such paragraph (3) and who continued to serve in that position;

Whereas Charlene Barshefsky was appointed Deputy United States Trade Representative on May 28, 1993, with the advice and consent of the Senate, and was serving in that position on January 1, 1996;

Whereas paragraph (3) of section 141(b) of the Trade Act of 1974 does not apply to Charlene Barshefsky in her capacity as Deputy United States Trade Representative; and

Whereas in light of the foregoing, it is appropriate to continue to waive the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 with respect to the appointment of Charlene Barshefsky as the United States Trade Representative: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of paragraph (3) of section 141(b) of the Trade Act of 1974 (19 U.S.C. 2171(b)(3)) or any other advice and consent of the Senate, is authorized to appoint Charlene Barshefsky as the United States Trade Representative.

Mr. ROTH. I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the nomination of Charlene Barshefsky, of the District of Columbia, to be the U.S. Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary, vice Michael Kantor.

NOMINATION OF CHARLENE BARSHEFSKY OF THE DISTRICT OF COLUMBIA TO BE U.S. TRADE REPRESENTATIVE WITH THE RANK OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY

The legislative clerk read the nomination of Charlene Barshefsky of the District of Columbia to be U.S. Trade Representative with the rank of Ambassador Extraordinary and Plenipotentiary.

The Senate proceeded to consider the nomination.

Ms. SNOWE. Mr. President, I rise in support of Charlene Barshefsky's nomination as the United States Trade Representative.

I have scrutinized Ms. Barshefsky's nomination very carefully. During the time of her confirmation hearing before the Finance Committee, I submitted a list of 10 specific questions concerning her past work on behalf of the Canadian Government, her commitment to aggressively defending and advocating United States trade interests before all foreign parties, and her commitment to raising issues of interest to Maine before the Canadian Government, particularly with regard to Maine's long-running problems on potato trade. I ask unanimous consent that these questions and her responses be printed in the RECORD after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Ms. SNOWE. My reason for investigating this nomination was simple: to make certain that this nominee could be counted on to defend United States. interests in the trade arena, and to ensure that her past legal work for Canadian entities would not in any way influence the exercise of her duties as United States Trade Representative.

Ms. Barshefsky's written responses to my questions, and on her responses to the questions of other senators and the Finance Committee, indicate that her nomination does not pose any such problems.

As has been widely reported, Ms. Barshefsky worked, while an attorney for a Washington, DC, law firm, for several Canadian entities. But as her responses to the Senate detail, this work amounted to a tiny fraction of the total over the course of her 18-year career as a trade attorney in private practice. In fact, Ms. Barshefsky has certified to me and to the Finance Committee that her work for all Canadian Government entities represents less than 1 percent of the total hours that she spent working while in private practice. Furthermore, Ms. Barshefsky states in her responses to me that she never lobbied the U.S. Government on behalf of any foreign government or political party.

I also questioned Ms. Barshefsky closely regarding her commitment to defend American interests in the arena of international trade. Ms. Barshefsky's responses are unequivocal. She states that she will forcefully defend and advocate American business interests in all international trade disputes, negotiations, and discussions involving the United States. She states that she will aggressively pursue all effective remedies to unfair trade practices committed by other countries against American businesses. And she states that she will pursue the strict adherence to, and vigorous enforcement of, all United States trade laws.

Ms. Barshefsky also specifically says that, if confirmed, she will ensure that the USTR's office raises the issues of concern to the U.S. potato industry during our bilateral meetings with Canada.

In addition to her words on paper, we also have Ms. Barshefsky's track record. She served as Deputy U.S. Trade Representative from 1993 to 1996, and as Acting U.S. Trade Representative for the past year. Her experience in these positions has given us a body of work to evaluate, and a record upon which to judge whether Ms. Barshefsky means what she says. And from what I have seen in her performance of her duties in these positions, through my own dealings with her, and from what other Senators have said, I believe that her deeds will be consistent with her words after she is confirmed.

I have spoken with and sought the assistance of Ms. Barshefsky on several occasions over the past year. In each instance, I have found Ms. Barshefsky to be responsive and cooperative. She displayed a genuine interest in the problems facing my constituents, and offered a number of options through which the administration could be of assistance.

I think it is also instructive to look at the Canadian softwood lumber issue. Although Ms. Barshefsky had, while in private practice, represented Canadian interests on the countervailing duty case that the United States filed against Canada in 1991, she later served as the second-highest ranking trade negotiator in the United States Government and participated in the negotiation of a bilateral agreement approved in 1996 that curtails subsidized Canadian softwood imports into the United States. That agreement has restored a measure of fairness to the lumber trade between the United States and Canada. And we would not have successfully concluded the agreement without the strong support of our senior trade officials like Ms. Barshefsky because the Canadians were under no legal obligations to sign an agreement with us. The United States had lost a succession of binational dispute resolution panel decisions on the issue up to that point, and had no way to legally require Canada to negotiate.

Mr. President, I was concerned when I first learned about some of Ms. Barshefsky's past work, but upon investigating this matter and questioning Ms. Barshefsky, I accept her assurances that this work will not influence her decisions and actions as the U.S. Trade Representative. And I am confident that she will defend and advocate American interests in the international trade arena, consistent with the policies of the Clinton administration. I cannot find anything in the record that compels opposition to Ms. Barshefsky's nomination, and I believe that she has earned the support of the Senate.

EXHIBIT 1

WRITTEN RESPONSE TO QUESTIONS FROM SENATOR SNOWE

CANADA/JOURNAL OF COMMERCE

The Journal of Commerce reported on November 15, 1996, that, as a lawyer in private practice, you were retained by the Canadian federal government and the Government of Quebec on issues involving trade with the U.S. in lumber and pork. What was the specific nature of the services that you provided on these governments on these issues, and at what times did you provide these services?

Following is the verbatim response provided to the Senate Finance Committee Questionnaire Statement of Information for Potential Nominees, Question C.6 on Potential Conflicts of Interest:

"Before becoming the Deputy United States Trade Representative in May of 1993, I worked for 18 years as a lawyer with the Washington law form if Steptoe & Johnson. The vast majority of my work during those 18 years was in the international trade area, particularly in the area of trade litigation, including antidumping, countervailing duty, escape clause, and similar on-the-record litigations arising under the U.S. trade laws. My representation of foreign governments or foreign political parties was limited to Canada, viz, the Government of Quebec and the Embassy of Canada, which were disclosed at the time that I was confirmed in 1993 to serve as Deputy United States Trade Representative. At no time during the 18 years that I practiced law did I ever lobby on behalf of any foreign government or foreign political party."

With respect to the Government of Quebec, my work involved providing guidance and legal drafting assistance to the Steptoe & Johnson lawyers responsible for the client in connection with on-the-record litigation in two trade cases: 1) the administrative reviews of countervailing duty orders on Fresh, Chilled and Frozen Pork from Canada (hereinafter Canadian Pork) and the appeal thereof to an FTA panel; and 2) the petition filed under Section 302 of the Trade Act of 1974 by the G. Heilman Brewing Company (later jointed by Stroh's Brewing Company) concerning Canadian beer practices (hereinafter Canadian Beer). I did not meet with any U.S. government officials or appear on behalf of Quebec in any proceeding, nor did my name appear on any of the briefs or submissions in any of the proceedings. With respect to Canadian Beer, neither I nor the firm were involved in the GATT Panel proceeding.

My work related to the Government of Quebec began in October of 1989 and ended in March 1991, almost six years ago. My time on the Canadian Pork and Canadian Beer matters totaled approximately 240 hours, which represented just over 0.50 percent of my work while in private practice.

With respect to the Embassy of Canada, my former law firm and I were retained by the Embassy to monitor developments in the United States concerning a broad range of substantive areas, including international trade. The contract with the Embassy of Canada for this monitoring work stated that Steptoe & Johnson was "to provide legal advice to the Canadian Embassy, in Washington, D.C., on political, legislative and regulatory developments in the United States relating to trade and economic issues." The Embassy explicitly prohibited lobbying on its behalf and I did not lobby.

We routinely reviewed developments in the international trade area, which included administrative, legislative and judicial actions on issues of relevance to the Embassy, ranging from changes in U.S. trade law to investment restrictions in various countries. I coordinated the work of other lawyers and paralegals in the firm as well, and routed to them pertinent materials for their use.

Pursuant to the monitoring contract, the Embassy requested that I also provide advice with respect to two specific trade matters. First, I directed the preparation of memoranda on the options and legal consequences if Canada were to terminate its settlement agreement with the United States involving softwood lumber, as well as the implications of judicial, administrative and legislative developments in U.S. trade law on possible future trade litigation in the event that Canada decided to terminate the settlement agreement. I did not recommend to the Embassy what course of action Canada should take with respect to the lumber matter. At the time that I directed this work, the settlement agreement was in force; there was no pending trade litigation and there were no negotiations on softwood lumber between the United States and Canada. In fact, my work on the settlement agreement ended several months before the countervailing duty litigation on *Softwood Lumber from Canada* began.2

Second, I reviewed certain draft composite texts prepared by the Chairmen of the GATT working groups on antidumping and countervailing duty law for circulation to all of the approximately 117 countries that participated in the Uruguay Round MTN. The Chairmen's drafts that I commented on were prepared by the GATT Chairmen as an attempt to reflect the consensus of GATT members. They were not U.S. texts. My review of these draft texts involved comparative analyses of the Chairmen's drafts with past GATT provisions, GATT practice, prior Chairmen's drafts, and U.S. law, as appropriate, and an evaluation of the potential impact of these and alternative texts on U.S. law.

My time spent on the MOU settlement agreement and MTN matters totaled approximately 145 hours, or slightly more than 0.30 percent of my work while in private practice. My work on these two matters was done intermittently from May 1990 to December 1991, and ended more than five years ago.

What other Canadian governments, business, industry groups, or organizations have you represented on matters related to trade with the United States? What was the specific nature of the services that you provided to these entities, and at what times did you provide these services?

As indicated in response to question 1, I represented the Canadian Forest Industries Council ("CFIC") in the countervailing duty litigation on *Softwood Lumber from Canada*. CFIC is an unincorporated association comprised of trade associations in the Canadian forest products sector, private Canadian softwood lumber producers, Canadian exporters of softwood lumber, and U.S. importers of softwood lumber. The services provided included those required in an on-the-record trade litigation, such as brief writing, assistance with preparation of responses to Department of Commerce questionnaires, and oral advocacy. I was retained in October, 1991, and my involvement ended when I left my former law firm, Steptoe & Johnson, in April, 1993.

Were you ever retained by a Canadian entity to work on a particular issue at a time when that entity was engaged in a formal dispute resolution proceeding with the United States related to that issue under trade agreements signed by the United States and Canada? If so, what was the specific nature of the work that you performed for that entity on that issue?

See question 1 which describes all my work relating to foreign governments. As indicated above, I was retained by CFIC in the countervailing duty litigation on *Softwood Lumber from Canada*.

Were you ever retained by a Canadian entity at a time when that entity was involved, either directly as a government, or indirectly as an interest lobbying a Canadian Federal or provincial government, in negotiations on bilateral and multilateral trade agreements to which the United States was a party? If so, can you please describe the specific nature of that work?

With respect to being retained directly by the Canadian government, see response to question 1. I was never retained by any client to lobby Canadian Federal or provincial governments.

Were you ever retained by the Canadian federal government, a provincial government, or any other Canadian entity to perform work related to the Uruguay Round negotiations of the GATT, particularly as these negotiations related to the United States? If so, can you please describe the specific nature of this work?

See response to question 1.

(a) Do you think your past work in the private sector on behalf of Canadian entities will in any way hamper your ability to perform your duties as the U.S. Trade Representative as those duties relate to Canada? (b) Do you feel compelled to recuse yourself on any matters that come before the U.S. Trade Representative's office on issues related to Canada?

(a). No.

(b) No. However, I have recused myself from any particular matter involving specific parties in which I served as counsel on that matter while in private practice, unless I have been authorized to participate in that matter under the provisions of 5 C.F.R. 2635, Subpart E.

Can you assure me and other senators that your past work on behalf of any Canadian entity will not have any bearing on the performance of your duties as the U.S. Trade Representative?

Yes, unequivocally.

American businesses need a forceful, aggressive, and indefatigable advocate in the position of U.S. Trade Representative, particularly when dealing with intransigent and unscrupulous governments like Canada's. (a) Do you intend to forcefully defend and advocate American business interests in all international trade disputes, negotiations, and discussions involving the United States? (b) Will you aggressively pursue all effective remedies to unfair trade practices committed by other countries against American businesses? (c) Will you, to the extent authorized in the position of Trade Representative, pursue the strict adherence to and vigorous enforcement of all U.S. trade laws?

(a) Yes

(b) Yes

(c) Yes

Do you intend to make full use of Sections 201, 202, and 203 of the Trade Act to assist American industries that are suffering from injurious import surges?

Sections 201, 202 and 203 are the so-called escape clause or safeguards sections of our trade laws. These provisions are administered primarily by the International Trade Commission (ITC), not the USTR. The law permits an entity that is representative of an industry, including a trade association, firm, union or group of workers to petition the ITC for relief. Alternatively, the President, USTR or House Committee on Ways and Means or Senate Committee on Finance may request the ITC to conduct an investigation. the ITC's investigation is to "determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or

directly competitive with the imported article." Once the ITC makes an affirmative injury determination, the ITC then recommends to the President certain actions to address the injury to the domestic industry. USTR is also involved in providing a recommendation to the President as to what course of action would best assist an industry in adjusting to a serge in imports. If confirmed as USTR, I would intend to review all recommendations by the ITC to grant relief to an injured industry in order to ensure that USTR provides the President with the most considered recommendation possible regarding remedy actions that might be taken.

Based on our past discussions, I know that you are aware of the long-running trade problems that the potato industry in Maine and other states has had with Canada. If confirmed, do you intend to make the satisfactory resolution of potato-related trade disputes with Canada a high-ranking and continuous priority of the United States? Will you take steps to ensure that this issue is prominently featured on the agenda of any major bilateral trade discussions with Canada?

As you know, in close consultation with the Maine potato industry, I sent a formal request to Marcia Miller, Chairman of the ITC, requesting a formal 332 investigation on conditions of competition in the fresh and processed potato industry. This investigation will focus on the factors affecting trade between the United States and Canada. I expect to receive this report by July 15. The report will provide information on Canadian prices and costs of production which may be useful to the Maine potato industry and the U.S. government.

I have become very familiar with this issue and will work closely with you over the months ahead on finding ways to address the concerns of this important industry. You can be assured that we will continue to raise the issues of concern for the Maine potato industry at our bilateral meetings with Canada.

Mr. DOMENICI. Mr. President, it is my pleasure to support the nomination of Charlene Barshefsky to become the U.S. Trade Representative.

Mr. President, one of the things I find most interesting about Charlene Barshefsky is that in many ways she is a study in contradiction. On the one hand, she is a tough-as-nails trade negotiator who has developed a reputation for bringing the most experienced and determined of opponents to their knees. On the other hand, she is a loving and supportive wife and mother who recognizes the importance of family and, despite having very important responsibilities, makes time for her children.

Mrs. Barshefsky's tough negotiating strategy has earned her the nickname "Stonewall" from her colleagues, and "Dragon Lady" from the Japanese. This reputation, however, was not gained at the expense of attention to her children. It has been reported that she has been known to help her children with homework while on the telephone to Hong Kong and other far off places.

Mr. President, I have had an opportunity to witness Mrs. Barshefsky's abilities first hand in the 1980's. At that time, a number of my colleagues and I fought to stop Chile from dumping Government subsidized copper on the world copper market potentially putting thousands of people in New Mexico and throughout the United States out of work. Although U.S. copper producers ran the most competitive mining operations in the world, Americans were loosing jobs because the Chilean Government was subsidizing its industry with Government revenues and development funds from the World Bank and the International Monetary Fund. Charlene Barshefsky was one of the primary people who worked to rectify this situation.

Mrs. Barshefsky has successfully worked on numerous other trade related issues since then. She became the Deputy U.S. Trade Representative in May, 1993, and Acting Trade Representative in April, 1996. She marshaled support for the Global Information Technology Agreement and successfully concluded negotiations on the Basic Telecommunications Services Agreement to expand telecommunications trade and facilitate the building of a global information infrastructure. She played a vital role in solving trade disputes with Japan and China. She fought to open markets for the U.S. agricultural industry, and is leading efforts to expand trade with Europe. In fact, its hard to find an area of trade where Mrs. Barshefsky has not been involved.

Charlene Barshefsky's tenacity and skill as a trade negotiator is well know the world over. Her demonstrated ability to do an exceptional job, her reputation for being a supreme tactician and tough negotiator, and her ability to do all of this and still make time for her family makes her an ideal choice for this post. For these reasons and others, it gives me great pleasure to support Charlene Barshefsky's nomination.

Mr. GORTON. Mr. President, I am pleased to voice my strong support for the nomination of Charlene Barshefsky as U.S. Trade Representative. Ambassador Barshefsky has done an outstanding job as acting USTR since her appointment last April.

I believe Ambassador Barshefsky is one of the best nominations President Clinton has made and am honored to have the opportunity to speak on her behalf. Charlene Barshefsky is an aggressive and articulate advocate of U.S. trade interests and has been very successful in defending U.S. business and agriculture throughout the world. The Office of the U.S. Trade Representative is vital to opening up trade markets to U.S. goods, and Charlene Barshefsky has proven herself to be very effective at doing just that.

Ambassador Barshefsky understands that U.S. agriculture and industry can compete very effectively in the international market, but only if trade barriers are torn down. She has been relentless in her efforts to expand market access for U.S. exports and to promote U.S. trade interests abroad.

I am particularly impressed with Ambassador Barshefsky's work on intellectual property rights. My State is home to the Nation's largest software producer and to many smaller software and video game companies. These businesses have faced devastating problems with the counterfeiting of their products overseas. Ambassador Barshefsky has been a leader in the fight to end such violations of U.S. intellectual property rights. Last year, she negotiated a tough deal with China. By threatening sanctions against $2 billion in Chinese exports to the United States, she was successful in forcing Beijing to crackdown on software counterfeiters. While intellectual property theft still occurs, Ambassador Barshefsky has made great strides in defending United States interests in Asia.

She has also worked as a tough negotiator on Pacific Northwest wheat exports to China. As many of my colleagues know, China has, for the past 25 years, imposed arbitrary restrictions on the importation of wheat from the United States. The Chinese Government claims that Washington State wheat is infected by TCK Smut disease and therefore forbids its import into China for fear that the disease will spread to Chinese wheat. Unfortunately, their claim has no scientific basis. Ambassador Barshefsky has worked diligently to eliminate trade restrictions based on unsound science. Although her efforts have not yet been successful, she has been the strongest voice Washington state wheat growers have had in the administration for several years.

Mr. President, I strongly support the nomination of Charlene Barshefsky, and I urge my colleagues to join me in voting to confirm her as U.S. Trade Representative.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, once more, I strongly endorse the nomination of Ambassador Barshefsky. I urge my colleagues to vote for her. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MOYNIHAN. Mr. President, I do want to assert that she is extraordinary and will be plenipotentiary.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Charlene Barshefsky, of the District of Columbia, to be U.S. Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 27 Ex.]

YEAS—99

Abraham	Feingold	Lott
Akaka	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frist	McCain
Bennett	Glenn	McConnell
Biden	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Breaux	Grassley	Murray
Brownback	Gregg	Nickles
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Sessions
Collins	Jeffords	Shelby
Conrad	Johnson	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thompson
Domenici	Landrieu	Thurmond
Dorgan	Lautenberg	Torricelli
Durbin	Leahy	Warner
Enzi	Levin	Wellstone
Faircloth	Lieberman	Wyden

NAYS—1

Allard

The nomination was confirmed.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

MORNING BUSINESS

Mr. ROTH. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 5 minutes each, with the exception of 20 minutes under the control of Senator SHELBY.

The PRESIDING OFFICER. Without objection, it is so ordered.

HERE'S WEEKLY BOX SCORE ON U.S. FOREIGN OIL CONSUMPTION

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending February 28, the United States imported 7,105,000 barrels of oil each day, 776,000 barrels more than the 6,329,000 imported during the same week a year ago.

Americans relied on foreign oil for 52.5 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 7,105,000 barrels a day.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, March 4, the Federal debt stood at $5,363,582,891,993.50.

One year ago, March 4, the Federal debt stood at $5,016,596,000,000.

Five years ago, March 4, 1992, the Federal debt stood at $3,845,731,000,000.

Ten years ago, March 4, 1987, the Federal debt stood at $2,260,529,000,000.

Fifteen years ago, March 4, 1982, the Federal debt stood at $1,052,613,000,000 which reflects a debt increase of more than $4 trillion—$4,310,969,891,993.50—during the past 15 years.

THE CONTRIBUTIONS OF THE SCOTCH-IRISH IN AMERICA

Mr. KENNEDY. Mr. President, as we approach St. Patrick's Day, the thoughts of many turn to Ireland. More than 44 million Americans are of Irish ancestry. It is often erroneously assumed that the vast majority of Irish-Americans are Catholics. But at least half of the 44 million are Protestants, many of which are descendants of the ancestors of the present-day Protestant communities in Northern Ireland and Ireland.

In the 1990 census, nearly 6 million Irish-Americans defined themselves as "Scotch-Irish"—an American term which did not begin to be used widely until the mid-19th century. Most of Protestant immigration from Ireland occurred in the 18th and early 19th centuries, whereas the majority of the large number of Irish who arrived in the United States beginning in the mid-19th century at the time of the potato famine in Ireland were Catholic.

The Scotch-Irish in America are descendants of the approximately 200,000 Scottish Presbyterians who settled in Ireland in the early 17th century. The modern Protestant majority in Northern Ireland are descendants of that Ulster Plantation.

In the late 1600's, religious persecution of Scottish Presbyterians by England led some to leave Ulster and seek religious freedom in the American colonies. Many of these immigrants settled in the Chesapeake Bay area. One such immigrant, Francis Makemie, is the father of American Presbyterianism.

The largest numbers of Scotch-Irish immigrants, about 250,000, left for the American colonies in the 18th century in the decades leading up to the Revolutionary War. They left Ulster less for religious than economic reasons, because of the decline in the linen industry, failed harvests, and high rents for tenant farmers. Many of these immigrants were so poor that they made their way to the colonies only by becoming indentured servants. The destination of the earliest of these immigrants was New England although many of these subsequently moved inland to the frontier. In "The Scotch-Irish and Ulster," Eric Montgomery writes of these immigrants:

> Ideally suited for the new life by reason of their experience as pioneers in Ulster, their qualities of character and their Ulster-Scottish background, they made a unique contribution to the land of their adoption. They became the frontiersmen of colonial America, clearing the forests to make their farms and, as one would expect, they had the defects as well as the qualities of pioneers. President Theodore Roosevelt described them as "a grim, stern people, strong and simple, powerful for good and evil, swayed by gusts of stormy passion, the love of freedom rooted in their very hearts' core."

The Scotch-Irish were staunch Calvinists and their religious differences with New England's Congregationalists led, after 1725, to a shift in their immigration from New England to Pennsylvania. These immigrants first settled near Philadelphia, but soon spread west throughout the entire State. Others went south to the Carolinas and Georgia, always extending the frontiers.

The Log College was established to train Presbyterian ministers near Philadelphia in 1726 or 1727 by Scotch-Irish minister Rev. William Tennent, Sr. It developed close ties with the College of New Jersey, which was founded in 1746, and later became Princeton University.

The impact of Scotch-Irish settlers on America was significant. Arthur Dobbs, a member of the Irish Parliament and a landowner from County Antrim, became Governor of North Carolina in 1753. Five signed the Declaration of Independence—Thomas McKean, Edward Rutledge, James Smith, George Taylor and Matthew Thornton. John Dunlap of Strabane printed the Declaration and also founded the Pennsylvania Packet, the first daily newspaper in America.

Large numbers of Scotch-Irish immigrants joined the fight for American independence. Irish volunteers performed so courageously in the Revolutionary Army that Lord Mountjoy told the British Parliament, "We have lost America through the Irish."

Charles Thomson came to Pennsylvania as an indentured servant, and

went on to serve as the Secretary of the Continental Congress from 1774 to 1789.

Scotch-Irishman Henry Knox was one of four members of President George Washington's first Cabinet. John Rutledge was the first Governor of South Carolina. Thomas McKean was the first Governor of Pennsylvania, and William Livingstone was the first Governor of New Jersey.

The Scotch-Irish were strong supporters of the Jeffersonians in the early years of American independence. The Harvard Encyclopedia notes:

The Scotch-Irish turned out in strength to vote for Thomas Jefferson in the election of 1800, and their influence, along with that of other immigrant groups, may well have been decisive in New York and thus the nation at large.

Twelve Americans of Scotch-Irish ancestry became President of the United States. The fathers of Andrew Jackson, James Buchanan and Chester Alan Arthur were each born in Northern Ireland. And James Polk, Andrew Johnson, Ulysses Grant, Grover Cleveland, Benjamin Harrison, William McKinley, Woodrow Wilson, and Richard Nixon were all of Scotch-Irish ancestry. President Clinton's family tree has several Irish branches, and undoubtedly contains both Scotch-Irish and Catholic roots.

The Scotch-Irish parents of John C. Calhoun emigrated to Pennsylvania and then moved to South Carolina. Born in 1782, he was elected to the House of Representatives from South Carolina at the age of 29, and went on to become Senator, Secretary of War, Secretary of State, and Vice President. As chairman of the Senate House Foreign Relations Committee in 1812, he introduced the declaration of war against Britain. His portrait is on the wall of the reception room adjacent to the Senate Chamber today, as one of the five greatest Senators in our history.

Many other famous Americans are of Scotch-Irish descent. Sam Houston served as Governor of Tennessee before moving to Texas and leading the fight for Texas' independence from Mexico. Before Texas joined the Union, he served as the first President of the Republic of Texas and, after, as Governor. He was a staunch defender of the Union, but his efforts to keep Texas from seceding prior to the Civil War failed, and he was removed as Governor when he refused to take Texas out of the Union after the vote to secede.

Stonewall Jackson was a descendent of Scotch-Irish immigrants from County Armagh. Davy Crockett was Scotch-Irish. Cyrus McCormick, inventor of the mechanical reaper, was given the French Legion of Honour by Napoleon, who described McCormick as "having done more for the cause of agriculture than any other living man." A successful businessman, active Democrat, and Presbyterian, he founded the McCormick Theological Seminary in Chicago.

The Mellon family emigrated to Pennsylvania from County Tyrone in 1818. Thomas Mellon, a young boy at the time, became a successful lawyer, banker, and businessman in Pittsburgh. He founded what became the Mellon Bank, and was instrumental in the growth and development of Pittsburgh. His son, Andrew Mellon, served as Secretary of the Treasury for Presidents Harding and Coolidge. He helped found Gulf Oil, Alcoa, and the Union Steel Co., which later merged into the U.S. Steel Corp. He assembled one of the world's greatest art collections, established the National Gallery of Art, and donated his collection to the gallery where vast numbers of Americans enjoy it every year. Andrew's son, Paul, and other members of the Mellon family have carried on the family's business success and extraordinary philanthropy.

The Scotch-Irish have also been well-represented in the arts. Edgar Allen Poe, Stephen Foster, Horace Greeley, founder of the New York Tribune, and Harold Ross, founder of the New Yorker, were all Scotch-Irish.

The majority of Irish-American Protestants today define themselves as "Irish," not "Scotch-Irish." By and large, the term "Scotch-Irish" fell into disuse over the years as discrimination against Catholics in this country declined.

Immigrants to America from all parts of Ireland, whether Catholic or Protestant, have made brilliant contributions to the success of America. Those of us who are committed to a just and peaceful resolution of the conflict in Northern Ireland know that peace will only be achieved there when both traditions are treated equally and fairly, and when mutual respect and a good-faith political process replace bombs and bullets as the means for settling disputes.

Ireland's extraordinary contributions to America reflect Ireland's two great traditions—Protestant and Catholic—and America honors them both on St. Patrick's Day 1997.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I thank the Chair.

(The remarks of Mr. BOND and Mr. CHAFEE pertaining to the introduction of S. 404 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BIDEN. Mr. President, I ask unanimous consent to proceed for 3 minutes, if I may, as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HUNGARY'S PROGRESS TOWARD NATO MEMBERSHIP

Mr. BIDEN. Mr. President, today I will deliver the first in a series of statements on the theme of NATO enlargement. In the next 4 months leading up to the Madrid Summit in July, I will examine the rationale for NATO's admitting new members, which countries appear to be leading candidates for admittance to the alliance, how NATO and Russia can define a new relationship, the responsibilities of our European allies in the process, and how to share the costs of enlargement fairly.

Mr. President, as many of our colleagues are aware, the distinguished foreign Minister of the Republic of Hungary, Laszlo Kovacs is in Washington this week for a series of meetings. I would like to take the occasion of the foreign Minister's visit to note the progress that Hungary has made toward meeting the criteria for membership in the North Atlantic Treaty Organization and to thank his government for the assistance it has provided to our forces involved in the Bosnia mission.

Mr. President, the foreign Ministers from the 16 NATO members will meet in Madrid in early July to decide which Central European democracies should be invited to begin accession negotiations with the Alliance.

In the NATO Enlargement Facilitation Act of 1996, Congress named Hungary—along with Poland, Slovenia, and the Czech Republic—as a leading candidate for NATO membership and, therefore, eligible for transition assistance. I plan to travel to the region over the Easter recess to assess the progress that these countries have made toward meeting the criteria set out in the NATO enlargement study. Today, however, I can already point to several things that indicate to me that Hungary is well on its way toward assuming the responsibilities of NATO membership.

The first is the successful effort by Hungary to conclude bilateral treaties with its neighbors, Romania, Slovakia, and Ukraine. Students of Central European history know how truly important these treaties are for the security of the region. Many had predicted that the end of the cold war would bring with it a resurrection of Hungary's territorial claims against its neighbors, and they predicted an era of instability that would make us wish the cold war had never ended.

Events, and the concerted effort of the Hungarian Government, have proven the pessimists wrong. First, Hungary has succeeded in establishing a stable, open democracy that has allowed the Hungarian people to enjoy the fruits of political and economic freedom.

Equally important, Hungary has recognized that its security and prosperity are dependent upon a resolution

of the territorial claims that poisoned relations with its neighbors in the decades after World War I.

For those of my colleagues who have asked: "Why should NATO admit new members?" I ask you to look closely at the Hungarian example. One of the criteria for new members of NATO is that they must resolve all territorial disputes with their neighbors.

Just as common membership in NATO has allowed France and Germany to overcome the enmity and territorial disputes that had resulted in three wars in 80 years, so too has the prospect of NATO membership led to reconciliation in Central Europe. The Hungarian Government is to be commended for its forward-thinking policies that recognize that cooperation is the key to stability in Europe in the 21st century. I particularly want to recognize the political courage of Hungarian Prime Minister Horn in disregarding the criticism of ultranationalists in his country and signing these treaties.

In exchange for renouncing territorial claims, Hungary has secured pledges that its neighbors will respect the rights of the large ethnic Hungarian communities in those countries. As the European Union also begins to expand its membership eastward, I hope that national boundaries in Central and Eastern Europe will matter less and less, and the free exchange of people, products, and ideas will help ensure peace and prosperity for all.

Romania and Slovakia are home to the largest Hungarian communities outside Hungary, and ideally we would like to see them join NATO as well. I am pleased by the recent progress made by Romania, which through free and fair elections has peacefully changed its government. The new ruling coalition, incidentally, includes a party representing the interests of the Hungarian minority.

Slovakia, unfortunately, for the past several years has seemed to be heading in the wrong direction. I must question the commitment of Prime Minister Vladimir Meciar to democracy, particularly to minority rights and a free press. The treaty with Hungary is a step forward, but if Slovakia is to join the community of Western democracies, it must show that it will not water down its commitments to respect the cultural and linguistic rights of its ethnic Hungarian citizens.

The other theme I want to focus on today is the cooperation that Hungary has extended to us and our allies in connection with the ongoing peacekeeping mission in Bosnia. An essential part of that mission has been a staging base in Taszar, Hungary, which the Hungarian Government has leased to the U.S. military. It is from that base that we have deployed our forces to Bosnia to prevent a return to Europe's worst fighting since World War II. As former Secretary of Defense Perry has stated, without the cooperation of Hungary, the IFOR and SFOR missions would have been immeasurably more difficult.

At Taszar 1,200 Hungarian troops are working with 3,200 Americans. This cooperation has allowed Hungarian officers and enlisted men to understand how a NATO military functions and what Hungary must do to allow its forces to operate jointly with those of the NATO countries. By all accounts, the work at Taszar has been a rousing success, both in supporting the IFOR and SFOR missions and in helping the Hungarian military.

The threat to the security of Europe today no longer comes from an easily identifiable Soviet adversary; it comes from the prospect of instability. It comes from the prospect of future Bosnias. NATO must adapt to this new reality and prepare itself to undertake missions outside the territory of its member states.

Our experience at Taszar shows that Hungarian membership in NATO will help us and our allies to carry out these new missions and will enable us together to help maintain the security and stability of the continent as a whole.

Moreover, the Taszar experience shows how NATO enlargement can help reduce costs that we and our allies would face without enlargement. Enlargement will allow us and our allies access to bases like Taszar in times of crisis, and it will allow the central European democracies to rely on others for part of their security, thereby reducing the cost to them of restructuring their militaries.

Let me reiterate that the prospective new members of NATO must agree to make the financial sacrifice necessary to modernize their militaries. We will, of course, do our fair share to help. In that regard, the 15 percent of the direct enlargement costs that last month's Pentagon cost study envisages the United States will assume seems an equitable proposal. But the prospective new members and the non-U.S. current NATO members must shoulder the largest share of the costs.

My meeting with Mr. Kovacs today to discuss Hungary's progress toward NATO membership was extremely fruitful, and, as I mentioned earlier, I will visit Budapest later this month to help me ascertain for myself if Hungary is ready to join the Atlantic alliance.

I commend the Hungarian people on the progress they have made in creating a successful democracy and free-market economy over the past 8 years and for their determination to ensure their security through cooperation with their neighbors and other democracies.

I hope that Hungary will continue in this direction and will meet the criteria for membership in NATO so that in July it will be in the group of prospective members invited to begin accession negotiations with the alliance.

I thank the chair and yield the floor.

I thank my colleague from Alabama for giving me the opportunity to take the floor.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Alabama.

NOMINATION OF MR. ANTHONY LAKE

Mr. SHELBY. Mr. President, I rise tonight to give to the Senate the status on the confirmation process in the Intelligence Committee of Anthony Lake, who has been nominated by President Clinton to be the next Director of the Central Intelligence Agency.

As I have said on many occasions, I intend to treat the confirmation of Anthony Lake, President Clinton's nominee to be Director of Central Intelligence in a serious, thorough and fair manner.

The Central Intelligence Agency and the intelligence community deserve a strong and independent leader to carry them into the 21st century. I believe that everyone in the Senate recognizes that.

This leader must be able to guide the fine men and women that serve our country and keep watch on our adversaries, sometimes under the most trying and dangerous of circumstances.

And, this leader must be deserving of the confidence of the President, the Congress, and the American people.

This is a controversial nomination, we have known this from the beginning. And it is essential that we address all of the issues associated with Mr. Lake's fitness to lead the intelligence community, and his ability to make the transition from White House insider to a political provider of intelligence information.

I'd like to comment on the six areas in which the committee has considerable work to complete as we proceed with Mr. Lake's confirmation hearings which will begin on Tuesday. We want to get the process moving, but it is important that we have the fullest cooperation from the White House.

These six areas are, among others: First, investigation of the role the National Security Council, under Mr. Lake's leadership, had in questionable DNC fund-raising practices, as well as any knowledge Mr. Lake may have had, if any.

Second, Mr. Lake's use and interpretation of intelligence provided to him as National Security Advisor, including how he helped translate this intelligence into administration policy.

Third, the Justice Department's settlement of Mr. Lake's ethics violations and the potential irregularities in this settlement.

Fourth, the way in which Mr. Lake handled the "no instructions" policy toward Iranian arms shipments through Croatia to Bosnia.

Fifth, review of Mr. Lake's FBI background investigation.

Sixth, review of written answers Mr. Lake provided to the committee's questions for the record, many of which require further explanation than was provided.

NSC INTERACTIONS WITH DNC CONTACTS

We will continue our investigation into the role of the NSC staff, under Mr. Lake's direction, in the expanding controversy over foreign campaign contributions.

At issue is the extent to which Mr. Lake knew of the ties the White House was building with questionable fundraisers and foreign contributors and what effect this might have had on administration foreign policy.

It is apparent that his staff had knowledge of the involvement, and although on many occasions advised against it for either political or foreign policy reasons, never seemed to raise the flag of illegality.

And if Mr. Lake was fully informed, did he participate in decisions to continue this involvement or were any admonitions he might have given regarding the nature of these meetings completely ignored?

This question goes to the heart of Mr. Lake's ability to be an effective Director of the Central Intelligence Agency.

The committee must consider this issue in great detail and determine if Mr. Lake could become embroiled in a potential independent counsel investigation into these matters, as we read in the press.

The intelligence community deserves a leader that will not be distracted by such an investigation, if it occurs.

The information supplied by Mr. Lake could be the tip of an iceberg, and more inquiry is required. For example, Mr. Lake does not appear to shed any light as to why his staff met with Pauline Kanchanalak, the Thai businesswoman and lobbyist whose contributions to the DNC were eventually returned.

New allegations about Ms. Kanchanalak appear in the press every day all over America, and perhaps the world.

For example, last Tuesday, the New York Times reported, and I quote: "One Justice Department official said subpoenas also were served on the United States-Thai Business Council, a trade-promotion group formed in part by Pauline Kanchanalak, a lobbyist who helped raise $250,000 in political donations that have since been returned by the Democratic National Committee."

The article goes on to say: "Government officials said the Justice Department two weeks ago subpoenaed records from the Export-Import Bank concerning Ms. Kanchanalak's efforts to help Thai investors * * *"

I ask for unanimous consent that this and other articles about Ms. Kanchanalak be entered into the RECORD at this point in their entirety.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 25, 1997]

INQUIRY INTO GIFTS TO DEMOCRATS WIDENS

(By Christopher Drew)

The Justice Department today subpoenaed the records of Johnny Chung, a California businessman who gave $391,000 to the Democratic Party, and others who made large donations while seeking access to the White House, Government officials said.

One Justice Department official said subpoenas also were served on the United States-Thai Business Council, a trade-promotion group formed in part by Pauline Kanchanalak, a lobbyist who helped raise $250,000 in political donations that have since been returned by the Democratic National Committee.

The subpoenas show that a Justice Department task force is continuing to widen its investigation into alleged improprieties in the Democrats' drive to raise huge sums for last year's elections.

The committee also is reviewing the donations made by Mr. Chung and others. It has already returned nearly $1.5 million in questionable donations. And one Democrat familiar with that review said today that the party is likely to return an additional $1 million, either because it could not verify the sources of the money or because the donations seemed improper.

Mr. Chung and Ms. Kanchanalak have declined to speak to reporters, and their lawyers could not be reached for comment last night.

Mr. Chung, an engineer who was born in Taiwan and is now an American citizen, has captured attention for his intense efforts to exploit his donations for commercial gains. Since mid-1994, he has visited the White House at least 50 times, sometimes bringing business associates from China and other Far East places that he wanted to impress.

Mr. Chung took two Chinese beer executives to a White House Christmas party in 1994, where they were photographed with President and Mrs. Clinton. The beer company later placed the photo in a glass display case promoting its product in one of Beijing's main shopping districts.

It could not be learned exactly what records were sought in the subpoenas issued today. But Justice Department officials have said they were examining whether any foreign money might have been improperly funneled into Democratic Party coffers.

Mr. Chung's lawyer, Brian A. Sun, told The New York Times last week that his client, who runs a fax-services business in Torrance, Calif., had received more than $3 million from investors over the last three years. Mr. Sun estimated that nearly $1.5 million of that total had come from foreigners as Mr. Chung expanded into consulting for foreign businessmen who wanted to make deals in the United States.

Mr. Sun said that Mr. Chung had done nothing wrong, and that Mr. Chung's foreign partners were not involved in his decisions to make the contributions. But it also is likely that the Justice Department investigators would want to trace the flow of money into Mr. Chung's accounts.

California records show that Mr. Chung incorporated seven companies with investors from China and Hong Kong over the last two years, and Federal election records show that several of his largest political donations were made at about the same time as the incorporations.

Mr. Chung also donated $50,000 to the Democratic Party in March 1995, shortly after he took high-level Chinese businessmen to watch Mr. Clinton give a radio address. Aides to Donald L. Fowler, then the national chairman of the Democratic Party, have said they arranged that White House visit at Mr. Chung's request. Mr. Fowler has said he was not personally involved and did not solicit a donation from Mr. Chung in return for the favor.

Ms. Kanchanalak, a Thai citizen who lives in Virginia, got help from John Huang, the former Democratic fund-raiser who is at the center of the Federal inquiry, in setting up the United States Thai-Business Council.

Government officials said the Justice Department two weeks ago subpoenaed records from the Export-Import Bank concerning Ms. Kanchanalak's efforts to help Thai investors win financing to build 105 Blockbuster video stores in Thailand. Ms. Kanchanalak has denied doing anything wrong.

[From the Wall Street Journal, Feb. 27, 1997]

FBI INQUIRY ON FUNDING IS WIDENING

(By David Rogers and Edward Felsenthal)

WASHINGTON.—A Federal Bureau of Investigation inquiry into foreign influence in Democratic fund raising could lead Director Louis Freeh to ask Attorney General Janet Reno to seek appointment of an independent counsel for the case.

Mr. Freeh briefed senior senators yesterday on the investigation, and officials later described the continuing FBI investigation as larger than previously reported and carried on outside the purview of the White House.

Serious evidence has been found of China's potential involvement in steering money to Democrats. That involvement appears to have been driven largely by business interests seeking influence and following the model of rival Taiwanese.

Pauline Kanchanalak, a major Democratic fundraiser who has represented Thai companies with large investments in China, has emerged as a key figure in the probe, officials said. While refusing to comment on details of the briefing, senate Intelligence Committee Chairman Richard Shelby said the evidence of foreign influence was "deep and disturbing."

"We need an independent counsel if we ever needed an independent counsel," the Alabama Republican said.

The Justice Department last night painted a less dire picture of Mr. Freeh's briefing, and Attorney General Reno continued to say that career prosecutors in the department can handle the fund investigation. Neither Sen. Shelby nor other officials familiar with the briefing were prepared to say what Mr. Freeh's final recommendations would be. But lawmakers of both parties said the investigation is regarded very seriously by the director, who has committed substantial resources to it.

FBI spokesman John Collingwood last night would say only that it is "a matter that is entirely within the purview of the attorney general."

Ms. Kanchanalak's role is important both because of her foreign clients and past access

to National Security Council staff at the White House. As such, her prominence could pose additional problems for former NSC adviser Anthony Lake, whose nomination to direct the Central Intelligence Agency already faces opposition in the Senate. Ms. Kanchanalak couldn't be reached for comment.

Critics of the Clinton administration have recently stepped up their demands for an independent counsel, particularly with the disclosure this week that the president himself played a role in encouraging the use of the White House as a fundraising vehicle. Federal law requires the attorney general to ask the federal appeals court here to appoint an independent counsel when there are "credible" and "specific" allegations of criminal wrongdoing against an official. The law explicitly applies to the president, cabinet members and some campaign officials; the attorney general has the discretion to apply it to others as well.

Some say that threshold has clearly been crossed. "I thought [Ms. Reno] had gotten past the point where she didn't have much choice under the statute some time ago," said Theodore Olson, a Washington lawyer who was assistant attorney general during the Reagan administration. Several lawmakers—including Senate Majority Leader Trent Lott of Mississippi, GOP Sen. John McCain of Arizona and Democratic Sen. Daniel Patrick Moynihan of New York—have called for an independent counsel.

Ms. Reno said yesterday in a hearing before a House committee that she still hasn't seen enough evidence to justify such an appointment. She added that she is still open to the idea if sufficient evidence emerges "as we proceed with the very comprehensive investigation that we now have under way." Ms. Reno has appointed a task force of career prosecutors to monitor the matter and to alert her if they conclude an independent counsel is necessary.

Lawyers agree that the independent-counsel law is fairly straightforward, requiring only a barebones determination by the attorney general of whether further investigation is necessary. But the question of what makes up a "credible" allegation is obviously a judgment call. In addition, given the complexities of the campaign-finance laws, it isn't always clear what constitutes a violation.

Some lawyers believe that the attorney general should err on the side of naming an independent counsel and leave it to the appointee to decipher the law.

But Justice Department officials maintain that Ms. Reno has very little discretion. People think that "whenever there's a mess, there's [supposed to be] an independent counsel," said a spokesman for Ms. Reno. "Congress could have written the law that way, but they didn't."

At a news conference yesterday, President Clinton reiterated his position that the decision was up to Ms. Reno. "It's a legal decision the attorney general has to make," he said. "I'm not going to comment."

Mr. SHELBY. Mr. President, these allegations about Ms. Kanchanalak, coupled with her interactions with the National Security Council, are very troubling to me and other members of the Committee. We must fully understand what part, if any, Mr. Lake played.

And while Mr. Lake has said that the NSC involvement with the individuals in question was "from a foreign policy rather than a domestic political point of view," the material he provided to the committee gives some indications otherwise.

For example, Mr. Lake advised the President against a meeting with Chinese nationals set up by Charlie (Tree) Trie, a major DNC fundraiser, based on the recommendation of his staff that it not take place for political reasons.

And when asked about providing photos of the President with Chinese nationals identified as major DNC contributors, a member of Mr. Lake's staff commented on balancing foreign policy considerations against domestic politics. He did not seem to be bothered by the fact that Chinese nationals were identified as major DNC contributors. Clearly, this is an indication of possible illegal activity.

Before questioning Mr. Lake about his leadership in these areas, we intend to question his staff further as to the role the NSC played in interactions with and vetting of these DNC contributors and foreign nationals.

Senator KERREY, vice chairman of the Intelligence Committee, and I have requested that the NSC staff be available for the interviews on the record prior to the formal hearings, which will begin, as I have said earlier, next Tuesday. We reserve the right to call NSC staff members to testify under oath, if we deem that in order.

The use of intelligence is another area.

One of the key responsibilities of the Director of Central Intelligence is to provide unbiased intelligence to the President and to the Congress. Thus, it is very critical that we examine Mr. Lake's record as a consumer of such intelligence.

How did he translate intelligence into policy at the NSC? Did he ignore intelligence estimates, spin them to fit administration policy, or raise the standards of evidence?

We have concluded our investigation surrounding the administration's use of intelligence in shaping policy toward China, and there are some serious inconsistencies. We are prepared to discuss these with Mr. Lake in the closed session of the committee.

Mr. President, given the allegations mentioned in every newspaper about Chinese involvement in DNC fundraising, this is an area for some serious questioning about potential influences on policy, and it should be.

For example, there are still documents we wish to review as to the role intelligence played in our policy toward the Government of Haiti. The administration has consistently refused to transmit this information to Congress. Senator KERREY and I have requested these documents, and we are still awaiting the National Security Council's response.

We are also reviewing United States knowledge and assessment of recent events in Iraq and their impact on our policy there and how Mr. Lake used this knowledge in formulating that policy. We are pursuing similar questions in areas relating to Cuba, Somalia, Bosnia, and Pakistan.

Ethics violations is another area we are pursuing.

While the Justice Department has reached a settlement with Mr. Lake regarding his failure to sell energy stocks that were deemed to create a conflict of interest for him, resulting in a payment of a $5,000 fine by Mr. Lake, the Committee on Intelligence has been investigating this matter further.

Although Mr. Lake claims that the failure to sell stocks was a simple oversight, Justice Department investigators interviewed by the committee documented 14 occasions over a 2-year period on which Mr. Lake was reminded that he still owned the stocks. It was only after a White House ethics officer discovered the stocks on his financial disclosure form for a third time that Mr. Lake did divest himself of the investments. Thus, a key question is whether this violation represents financial mismanagement on the part of Mr. Lake or a complete disregard for the seriousness of the ethics standards applied to all Federal employees.

Additionally, what example does this set for the intelligence community professionals who must be held to the highest standards of personal conduct?

The Intelligence Committee is also investigating the thoroughness of the Justice Department's investigation into Mr. Lake's stocks, particularly those energy-related stocks which created a conflict of interest and subsequent fine. Given that Mr. Lake garnered a profit of over $25,000 on these investments, I have trouble, as other members of the committee do, understanding the Justice Department's arbitrary fine of $5,000, which is the maximum allowed, I understand, for a potential misdemeanor offense.

If the case, on the other hand, had been referred to the Justice Department's civil division, a much greater fine of up to $50,000 per offense could have been imposed. Why wasn't this course taken? We do not know, but we will pursue it.

Iran-Bosnia and the "no instructions" policy.

A key criterion for a Director of Central Intelligence is the extent to which he or she can gain the confidence of the Congress in keeping Members fully and currently informed of intelligence community actions. Mr. Lake's role in the execution of the secret "no instructions" policy toward Croatia allowing Iranian arms to flow into Bosnia and the decision, Mr. President, not to inform Congress of this action has called into question Mr. Lake's ability to be forthright with the Congress.

The distinguished former chairman of the Intelligence Committee, my colleague and an expert in the area, Senator SPECTER, has raised serious questions regarding this matter which we intend to explore fully during our hearings.

While Mr. Lake has admitted that it was wrong not to inform Congress of the "no instructions" policy, there remains a number of inconsistencies in testimony before both Houses of Congress as to the extent of the policy decision and its implementation. The Intelligence Committee is working with other congressional committees to review pertinent testimony and decide on an appropriate panel of witnesses to pursue this matter during Mr. Lake's confirmation hearings. The Senate confirmation hearings will represent the first time that Mr. Lake will testify under oath on his role in the development and execution of this policy.

As to the FBI background investigation, there has been no resolution regarding requests made by me and a large number of my colleagues to review Mr. Lake's complete FBI background file. Negotiations between White House Counsel Charles Ruff, Senator KERREY, and I are continuing.

A significant number of my colleagues have written the distinguished majority leader stating that they need to review the complete background investigation before they would be prepared to vote on this nomination. Our thorough review of Mr. Lake's background investigation, I believe, is key to a fundamental understanding of Mr. Lake's character and integrity, as it would be for anyone else.

Finally, the committee is reviewing information provided by Mr. Lake in response to questions propounded by the committee earlier. We require some clarifications to Mr. Lake's answers, and therefore additional questions have been put forward that must be addressed.

There are some areas where we are requesting additional supporting documentation to Mr. Lake's answers, such as his financial disclosures and issues associated with a potential conflict of interest, and we will request for the committee a review of material that was redacted for various reasons.

I thank you, Mr. President, for this opportunity to provide the Senate with a status of the Lake confirmation process and an opportunity for me to lay out some of the concerns that I and some of my colleagues have about this nomination. We intend to work through each of these issues in a fair and a thorough manner and look forward to questioning Mr. Lake and others beginning next Tuesday, March 11.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE NOTICE OF THE CONTINUATION OF THE IRAN EMERGENCY—MESSAGE FROM THE PRESIDENT—PM 20

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the Iran emergency declared on March 15, 1995, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) is to continue in effect beyond March 15, 1997, to the *Federal Register* for publication. This emergency is separate from that declared on November 14, 1979, in connection with the Iranian hostage crisis and therefore requires separate renewal of emergency authorities.

The factors that led me to declare a national emergency with respect to Iran on March 15, 1995, have not been resolved. The actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and its acquisition of weapons of mass destruction and the means to deliver them, continue to threaten the national security, foreign policy, and economy of the United States. Accordingly, I have determined that it is necessary to maintain in force the broad authorities that are in place by virtue of the March 15, 1995, declaration of emergency.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 5, 1997.*

MEASURE PLACED ON THE CALENDAR

The following measures was read the second time and placed on the calendar:

S.J. Res. 22. Joint resolution to express the sense of the Congress concerning the application by the Attorney General for the appointment of an independent counsel to investigate allegations of illegal fundraising in the 1996 presidential election campaign.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1310. A communication from the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, four rules including a rule entitled "Approval and Promulgation of Implementation Plans" (FRL5696–8, 5696–6, 5697–7, 5697–3) received on March 3, 1997; to the Committee on Environment and Public Works.

EC–1311. A communication from the Chairman of the Prospective Payment Assessment Commission, transmitting, pursuant to law, the report of recommendations concerning Medicare payment policies; to the Committee on Finance.

EC–1312. A communication from the Director of the Office of Regulations Management, Department of Veterans' Affairs, transmitting, pursuant to law, a rule entitled "Veterans' Education" (RIN2900–AI53) received on March 4, 1997; to the Committee on Veterans' Affairs.

EC–1313. A communication from the Director of the U.S. Trade and Development Agency, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1314. A communication from the Executive Director of the Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1315. A communication from the U.S. Office of Special Counsel, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1316. A communication from the Acting Director of the Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–1317. A communication from the Assistant Secretary (Management) and Chief Financial Officer, Department of the Treasury, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following report of committee was submitted on March 4, 1997:

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 19: A resolution expressing the sense of the Senate regarding United States opposition to the prison sentence of Tibetan ethnomusicologist Ngawang Choephel by the Government of the People's Republic of China.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 392. A bill to provide an exception to the restrictions on eligibility for public benefits for certain legal aliens; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 393. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. COCHRAN, Mr. SPECTER, and Mr. FAIRCLOTH) (by request):

S. 394. A bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting future compensation of justices and judges of the United States; to the Committee on the Judiciary.

By Mr. BREAUX (for himself and Mr. BRYAN):

S. 395. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

By Ms. MIKULSKI (for herself and Mr. SARBANES):

S. 396. A bill to amend titles 5 and 37, United States Code, to provide for the continuance of pay and the authority to make certain expenditures and obligations during lapses in appropriations; to the Committee on Governmental Affairs.

By Ms. MIKULSKI (for herself and Mr. LEAHY):

S. 397. A bill to amend chapters 83 and 84 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers, to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the United States Customs Service, and revenue officers of the Internal Revenue Service; to the Committee on Governmental Affairs.

By Mrs. MURRAY:

S. 398. A bill to amend title 49, United States Code, to require the use of child restraint systems approved by the Secretary of Transportation on commercial aircraft, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN:

S. 399. A bill to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the United States Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GRASSLEY:

S. 400. A bill to amend rule 11 of the Federal Rules of Civil Procedure, relating to representations in court and sanctions for violating such rule, and for other purposes; to the Committee on the Judiciary.

By Mr. JEFFORDS:

S. 401. A bill to improve the control of outdoor advertising in areas adjacent to the Interstate System, the National Highway System, and certain other federally assisted highways, and for other purposes; to the Committee on Finance.

By Mr. GORTON (for himself and Mrs. MURRAY):

S. 402. A bill to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD:

S. 403. A bill to expand the definition of limited tax benefit for purposes of the Line Item Veto Act; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committees have thirty days to report or be discharged.

By Mr. BOND (for himself, Mr. CHAFEE, Mr. NICKLES, Mr. COCHRAN, Mr. GREGG, and Mr. SMITH):

S. 404. A bill to modify the budget process to provide for seperate budget treatment of the dedicated tax revenues deposited in the Highway Trust Fund; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one Committee reports, the other Committees have thirty days to report or be discharged.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. D'AMATO, Mr. ABRAHAM, Mr. BINGAMAN, Mrs. BOXER, Mr. DORGAN, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. DEWINE, Mr. CONRAD, Mr. ROCKEFELLER, and Mrs. FEINSTEIN):

S. 405. A bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit and to allow greater opportunity to elect the alternative incremental credit; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. ALLARD, Mr. BOND, Mr. LIEBERMAN, and Mr. BURNS):

S. 406. A bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. BURNS):

S. 407. A bill to amend the Communications Act of 1934 to clarify the authority of the Federal Communications Commission to authorize foreign investment in United States broadcast and common carrier radio licenses; to the Committee on Commerce, Science, and Transportation.

By Mrs. BOXER (for herself and Mr. BINGAMAN):

S. 408. A bill to establish sources of funding for certain transportation infrastructure projects in the vicinity of the border between the United States and Mexico that are necessary to accommodate increased traffic resulting from the implementation of the North American Free Trade Agreement, including construction of new Federal border crossing facilities, and for other purposes; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 392. A bill to provide an exception to the restrictions on eligibility for public benefits for certain legal aliens; to the Committee on Finance.

THE ELDERLY AND DISABLED LEGAL IMMIGRANT SUPPORT ACT OF 1997

• Mrs. FEINSTEIN. Mr. President, last year we approved the most comprehensive welfare reform this Nation has ever known. Because the changes were so comprehensive, this body approved the bill with much reservation, particularly on the provision for the elderly and disabled legal immigrants.

Today, I correct one of the major challenges left over from the welfare reform last year that if uncorrected, will have a devastating impact on the States and counties by shifting the cost of caring for the seriously ill and destitute disabled and elderly legal immigrants who have absolutely no other means of support.

I am here to offer the Elderly and Disabled Legal Immigrant Support Act with Senator BOXER as the cosponsor in the Senate, and Congressman CAMPBELL and Congresswoman LOFGREN as sponsors in the House of Representatives.

The Elderly and Disabled Legal Immigrant Support Act of 1997 would exempt from the current ban on SSI, those elderly, disabled and/or blind legal immigrants, who came to this country prior to passage of the welfare bill—August 22, 1996, who can demonstrate that they have no family and have no other source of support. This legislation prohibits SSI for all legal immigrants coming to this country following the date of enactment of the welfare reform bill, August 22, 1996.

This legislation corrects what I believe is a grave mistake in the Federal welfare reform law—a blanket denial of SSI to all legal noncitizens, no matter how elderly, disabled, destitute and ill they may be.

Over 20 California county supervisors, both Republican and Democrat, have spoken out, in one voice, that the legal immigrant provisions of the welfare law will be disastrous for California counties and this legislation is critical for the Counties and for the country.

In California alone, 200,000 to 326,000 people may lose SSI by August 22, 1997.

Los Angeles County estimates that eliminating benefits for 93,000 legal immigrants in its county could cost up to $236 million a year.

San Francisco estimates that 20,000 legal noncitizens may turn to the county's general assistance program, at a total cost of up to $74 million.

Many top immigrant States and counties will also bear the burden of caring for the elderly, disabled, and blind legal immigrants who are banned from SSI.

New York—126,860 legal immigrants may lose their SSI, costing the State approximately $240 million annually.

Florida—77,920 legal immigrants may lose their SSI, costing the State approximately $300 million annually.

Texas—59,160 legal immigrants may lose their SSI.

Illinois—25,960 legal immigrants may lose their SSI.

New Jersey—25,500 legal immigrants may lose their SSI.

Massachusetts—25,140 legal immigrants may lose their SSI.

The Republican Governors who supported the welfare reform bill now realize that the new law, as written, will result in a huge financial cost-shift to their states.

President Clinton has also recognized that legal immigrants who become disabled after entry should not be banned from SSI and food stamps and has allocated $13.7 billion in the 1998 budget for this population who have nowhere else to turn.

As we speak, 125,000 SSI cancellation notices are going out to elderly, disabled, and blind legal immigrants every week. Many elderly and disabled legal immigrants have absolutely no family or friends to turn to for support and will be destitute. They have no one to turn to, except county relief programs or, at worst, homeless shelters. Effective August 22 of this year, all legal immigrants currently receiving SSI will be cut from the rolls regardless of their circumstances.

I know that prior to welfare reform, the door was open for sponsors to bring in their parents and then neglect to support them or, if they are unable to support them, to know that legal immigrants were eligible for SSI. The number of noncitizens collecting SSI had increased by 477 percent in the 14 years from 1980 to 1994, while for citizens the numbers increased by 33 percent during the same period. Clearly, one can extrapolate from these statistics that legal immigrants were using SSI at 15 times the rate of citizens.

I hold the sponsors accountable for the support of legal immigrants they bring into the country who they have pledged to support. But the Federal welfare reform banning SSI for virtually all legal immigrants—even those whose sponsors cannot afford to support them, or those refugees who have no sponsors at all—will create extreme hardship for those elderly, blind, and disabled legal immigrants who are unable to support themselves.

Let me tell you the story about a 73-year-old legal immigrant in San Francisco on SSI. She was welcomed to this county from Vietnam in 1980. She was a refugee from Communism with no family in the United States. She speaks no English and she is suffering from kidney failure. She requires dialysis three times a week. Under this new law, this 73-year-old woman will lose SSI, her only source of support. Her well-being will become the responsibility of the county.

I urge my colleagues to seriously consider and support this limited exemption from the current ban on SSI by allowing those elderly, blind, or disabled individuals, who were in the country prior to August 22, 1996, and who have no other means of support, to continue on SSI. The ban on SSI would apply to those coming into the country after August 22, 1996.

Mr. President, I ask for unanimous consent that the text of the bill and a chart on number of aliens receiving SSI payments by legal status and State be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 392

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCEPTION TO ELIGIBILITY RESTRICTIONS FOR PUBLIC BENEFITS FOR CERTAIN LEGAL ALIENS.

(a) IN GENERAL.—Subtitle A of title V of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1772) is amended by adding at the end the following:

"SEC. 511. EXCEPTION FOR CERTAIN LEGAL ALIENS.

"(a) IN GENERAL.—Notwithstanding any other provision of law, an alien who was lawfully present in the United States on August 22, 1996, and who lawfully resides in a State, is age 65 or older, is disabled and/or blind, as determined under paragraph (2) and/or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a)), whose family is incapable of support, and who can demonstrate that he or she has no other sufficient means of support other than that provided under the program described in subsection (b), shall be eligible to receive benefits under such program.

"(b) PROGRAM DESCRIBED.—The program described in this subsection is the program described in section 402(a)(3)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(3)(A)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect as if included in the enactment of subtitle A of title V of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1772).

(c) NOTICE AND REDETERMINATION.—The Commissioner of Social Security shall, not later than 30 days after the date of enactment of this Act, notify an individual described in section 511(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as added by this Act) and who, as of such date, has been redetermined to be ineligible for the program described in section 511(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as so added), that the individual's eligibility for such program shall be redetermined again, and shall conduct such redetermination in a timely manner.

Number of Aliens Receiving SSI Payments by Legal Status and State, October 1996

State	Total	Color of law	Lawfully admitted
Total	803,030	206,600	596,430
Alabama	600	110	490
Alaska	820	(1)	(1)
Arizona	7,930	1,450	6,480
Arkansas	380	100	280
California	326,080	86,880	239,200
Colorado	5,660	1,810	3,850
Connecticut	4,870	1,120	3,750
Delaware	400	(1)	(1)
District of Columbia	960	150	810
Florida	77,920	17,890	60,030
Georgia	4,860	1,350	3,510
Hawaii	4,440	640	3,800
Idaho	430	(1)	(1)
Illinois	25,960	7,180	18,820
Indiana	1,150	280	870
Iowa	1,220	500	720
Kansas	1,640	400	1,240
Kentucky	790	390	400
Louisiana	2,860	490	2,370
Maine	610	240	370
Maryland	9,040	2,330	6,710
Massachusetts	25,140	7,630	17,510
Michigan	8,220	1,770	6,450
Minnesota	7,180	3,340	3,840
Mississippi	510	120	390
Missouri	1,960	860	1,100
Montana	170	(1)	(1)
Nebraska	760	320	440
Nevada	2,710	530	2,180
New Hampshire	320	90	230
New Jersey	25,500	3,730	21,770
New Mexico	3,500	350	3,150
New York	126,860	35,180	91,680
North Carolina	2,760	790	1,970
North Dakota	200	100	100
Ohio	5,970	2,480	3,490
Oklahoma	1,360	310	1,050
Oregon	4,640	1,940	2,700
Pennsylvania	12,540	5,270	7,270
Rhode Island	3,720	760	2,960
South Carolina	620	100	520
South Dakota	220	(1)	(1)
Tennessee	1,400	370	1,030
Texas	59,160	5,930	53,230
Utah	1,550	460	1,090
Vermont	180	(1)	(1)
Virginia	8,000	1,720	6,280
Washington	14,100	6,370	7,730
West Virginia	210	(1)	(1)
Wisconsin	4,900	2,250	2,650
Wyoming	(1)	(1)	(1)

Number of Aliens Receiving SSI Payments by Legal Status and State, October 1996—Continued

[1]Relative sampling error too large for presentation of estimates.
Source: SSI 10-Percent Sample File, October 1996.●

By Mr. DODD (for himself and Mr. LIEBERMAN:)

S. 393. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

THE POLICE AND FIREFIGHTERS TAX CLARIFICATION ACT

● Mr. DODD. Mr. President, today I am introducing legislation that would provide a measure of tax fairness for more than 1,000 police officers, firefighters, and their families in my home State of Connecticut. I am pleased to be joined in this effort by Senator LIEBERMAN.

This bill clarifies the tax treatment of heart and hypertension benefits awarded to Connecticut's police officers and firefighters prior to 1992. The clarification is necessary because of an error made in the original version of Connecticut's heart and hypertension law. Under that law, Connecticut intended to treat heart and hypertension benefits as workmen's compensation for tax purposes. Unfortunately, because of the language used in the State statute, the heart and hypertension benefits became taxable under a ruling by the Internal Revenue Service [IRS] in 1991.

Since the IRS ruling, Connecticut has amended its law. But that change does not help those police officers, firefighters, and their families, who received benefits prior to the amendment. These law-abiding citizens accepted the benefits with the understanding that they were not taxable.

Now, as a result of the problem with the State law, and through no fault of their own, they have been charged with back taxes, interest, and penalties by the IRS. This has created serious financial difficulties for a number of families.

I hope that my colleagues will join with me in remedying this problem. Across this Nation, our firefighters and police officers work hard to protect our homes and businesses. They face incredible danger, and sometimes risk their lives, to help keep our communities safe. The hazards they face make their jobs particularly stressful. They need the security provided by heart and hypertension benefits. They should not have to contend with back taxes and penalties assessed due to an error in State law.

Under this legislation, which would remove their liability for heart and hypertension benefits for the years affected by the IRS ruling—1989–91, we can treat these public servants and their families more fairly. This bill is narrowly drafted to accomplish that limited purpose and would not affect the tax treatment of heart and hypertension benefits awarded after January 1, 1992.

Mr. President, my efforts to pass this legislation date back to the 102d Congress. During that Congress, Senator LIEBERMAN and I worked with Representatives BARBARA KENNELLY and ROSA DELAURO and this bill became a part of the Revenue Act of 1992. Although the Revenue Act was passed by Congress, it was vetoed by President Bush 1 day after he lost the election. We tried again during the 103d Congress, but we were unable to move the bill through the relevant committees. Last year, we hoped to move the bill as part of a broader tax and pension package, but that legislation was also stalled.

I urge my colleagues to help pass this legislation quickly this year. We must provide relief to the Connecticut police officers, firefighters, and their families, who are facing severe financial hardship even though they have tried to follow the rules. Through no fault of their own, they have been hit with significant back taxes and penalties. We should remedy this problem and help them move on with their lives.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 393

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TREATMENT OF CERTAIN DISABILITY BENEFITS RECEIVED BY FORMER POLICE OFFICERS OR FIREFIGHTERS.

(a) GENERAL RULE.—For purposes of determing whether any amount to which this section applies is excludable from gross income under section 104(a)(1) of the Internal Revenue Code of 1986, the following conditions shall be treated as personal injuries or sickness in the course of employment:

(1) Heart disease.

(2) Hypertension.

(b) AMOUNTS TO WHICH SECTION APPLIES.—This section shall apply to any amount—

(1) which is payable—

(A) to an individual (or to the survivors of an individual) who was a full-time employee of any police department or fire department which is organized and operated by a State, by any political subdivision thereof, or by any agency or instrumentality of a State or political subdivision thereof, and

(B) under a State law (as in existence on July 1, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees separating from service before such date; and

(2) which is received in calendar year 1989, 1990, or 1191.

For purposes of the preceding sentence, the term "State" includes the District of Columbia.

(c) WAIVER OF STATUTE OF LIMITATIONS.—If, on the date of the enactment of this Act (or at any time within the 1-year period beginning on such date of enactment) credit or refund of any overpayment of tax resulting from the provisions of this section is barred by any law or rule of law, credit or refund of such overpayment shall, nevertheless, be allowed or made if claim therefore is filed before the date 1 year after such date of enactment.●

By Mr. HATCH (for himself, Mr. LEAHY, Mr. COCHRAN, Mr. SPECTER, and Mr. FAIRCLOTH) (by request):

S. 394. A bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting future compensation of justices and judges of the United States; to the Committee on the Judiciary.

FEDERAL JUDICIAL COMPENSATION LEGISLATION

● Mr. HATCH. Mr. President, at the request of the Judicial Conference of the United States, I am introducing a bill to increase the current salaries of Federal judges and to establish a procedure for future cost-of-living increases in judicial compensation.

This legislation was prepared by the Administrative Office of the United States Courts. I believe that, out of comity to the judicial branch, the Senate should have on record the judiciary's specific proposals with respect to judicial compensation, so that we can give those suggestions a full and fair hearing. These proposals deserve fair consideration.

Federal judges have not received a cost-of-living salary adjustment since January 1994. This bill would amend United States Code title 28, sections 5, 44(d), 135, and 252, to provide an immediate, one-time 9.6 percent adjustment in the compensation of Justices of the Supreme Court and Federal circuit court, district court, and international trade court judges appointed under article III of the Constitution. The bill would also have the effect of increasing, by the same percentage, the salaries of Federal court of claims and bankruptcy judges and full-time U.S. magistrate judges, since their salaries are, by statute, fixed, based on the salaries of Federal district court judges.

With respect to future judicial salary adjustments, the bill would amend section 461 of title 28 to end the current linkage between the judicial, congressional, and Executive Schedule compensation. Instead, judicial salaries would be adjusted automatically on an annual basis, in the same percentage amount as the rate of pay of Federal employees under the General Schedule.

Finally, the bill would repeal section 140 of Public Law No. 97–92, thereby removing the current requirement that Congress affirmatively vote for cost-of-living increases for Federal judges.

If we are to attract and retain the most capable lawyers to serve as Federal judges, it is vitally important that we ensure that those responsible for the effective functioning of the judicial branch receive fair compensation, including reasonable adjustments which allow judicial salaries to keep pace with increases in the cost of living. As Chief Justice Rehnquist stated in his "1996 Year-End Report on the Federal Judiciary," "We must insure that judges, who make a lifetime commitment to public service, are able to plan their financial futures based on reasonable expectations." This bill, which I am introducing at the request of the Judicial Conference, proposes changes viewed by the Judicial Conference as advancing this objective—an objective with which I believe most Senators would agree. The bill merits serious consideration by the Senate.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 394

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. JUDICIAL SALARIES.

(a) INCREASE IN JUDICIAL SALARIES.—

(1) IN GENERAL.—Notwithstanding sections 5, 44(d), 135, and 252 of title 28, United States Code, the annual salary rates of the Chief Justice of the United States, Associate Justices of the Supreme Court of the United States, judges of the United States Courts of Appeals, judges of the United States District Courts, and judges of the United States Court of International Trade, are increased in the amount of 9.6 percent of each applicable rate in effect on the date immediately preceding the effective date of this subsection rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100).

(2) EFFECTIVE DATE.—This subsection shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

(b) JUDICIAL COST-OF-LIVING ADJUSTMENTS.—Section 461(a) of title 28, United States Code, is amended to read as follows:

"(a) Effective on the same date that the rates of basic pay under the General Schedule are adjusted pursuant to section 5303 of title 5, each salary rate which is subject to adjustment under this section shall be adjusted by the same percentage amount as provided for under section 5303 of title 5, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100).".

(c) AUTOMATIC ADJUSTMENTS WITHOUT CONGRESSIONAL ACTION.—Section 140 of the resolution entitled "A Joint Resolution making further continuing appropriations for the fiscal year 1982, and for other purposes,", approved December 15, 1981 (Public Law 97-92; 95 Stat. 1200; 28 U.S.C. 461 note) is repealed.•

By Mr. BREAUX (for himself and Mr. BRYAN):

S. 395. A bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits; to the Committee on Finance.

THE DISTILLED SPIRITS TAX PAYMENT SIMPLIFICATION ACT OF 1997

• Mr. BREAUX. Mr. President, today I introduce the "Distilled Spirits Tax Payment Simplification Act of 1997," a bill more readily known as All-In-Bond. This bill would streamline the way in which the Government collects Federal excise tax on distilled spirits by extending the current system of collection now applicable only to imported products to domestic products as well.

Today wholesalers purchase foreign-bottled distilled spirits in bond—tax free—paying the Federal excise tax directly after sale to a retailer. In contrast, when the wholesaler buys domestically bottled spirits—nearly 86 percent of total inventory—the price includes the Federal excise tax, prepaid by the distiller. This means that hundreds of U.S. family-owned wholesale businesses increase their inventory carrying costs by 40 percent when buying U.S. products, which often have to be financed through borrowing.

Under my bill, wholesalers would be allowed to purchase domestically bottled distilled spirits in bond from distillers just as they are now permitted to purchase foreign-produced spirits. Products would become subject to tax on removal from wholesale premises. This legislation is designed to be revenue neutral and includes the requirement that any wholesaler electing to purchase spirits in bond must make certain estimated tax payments to Treasury before the end of the fiscal year.

All-In-Bond is an equitable and sound way to streamline our tax collection system. I hope my colleagues will join me in cosponsoring this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Distilled Spirits Tax Payment Simplification Act of 1997".

(b) REFERENCE TO 1986 CODE.—Except as otherwise expressly provided, whenever an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

(a) IN GENERAL.—Section 5212 is amended to read as follows:

"SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN BONDED PREMISES.

"Distilled spirits on which the internal revenue tax has not been paid as authorized by law may, under such regulations as the Secretary shall prescribe, be transferred in bond between bonded premises in any approved container. For the purposes of this chapter, except in the case of any transfer from a premise of a bonded dealer, the removal of distilled spirits for transfer in bond between bonded premises shall not be construed to be a withdrawal from bonded premises.".

(b) CONFORMING AMENDMENT.—The first sentence of section 5232(a) (relating to transfer to distilled spirits plant without payment of tax) is amended to read as follows: "Distilled spirits imported or brought into the United States, under such regulations as the Secretary shall prescribe, may be withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the internal revenue tax imposed on such distilled spirits.".

SEC. 3. ESTABLISHMENT OF DISTILLED SPIRITS PLANT.

Section 5171 (relating to establishment) is amended—

(1) in subsection (a), by striking "or processor" and inserting "processor, or bonded dealer";

(2) in subsection (b), by striking "or as both" and inserting "as a bonded dealer, or as any combination thereof";

(3) in subsection (e)(1), by inserting ", bonded dealer," before "processor"; and

(4) in subsection (e)(2), by inserting "bonded dealer," before "or processor".

SEC. 4. DISTILLED SPIRITS PLANTS.

Section 5178(a) (relating to location, construction, and arrangement) is amended by adding at the end the following:

"(5) BONDED DEALER OPERATIONS.—Any person establishing a distilled spirits plant to conduct operations as a bonded dealer may, as described in the application for registration—

"(A) store distilled spirits in any approved container on the bonded premises of such plant, and

"(B) under such regulations as the Secretary shall prescribe, store taxpaid distilled spirits, beer, and wine, and such other beverages and items (products) not subject to tax or regulation under this title on such bonded premises.".

SEC. 5. BONDED DEALERS.

(a) DEFINITIONS.—Section 5002(a) (relating to definitions) is amended by adding at the end the following:

"(16) BONDED DEALER.—The term 'bonded dealer' means any person who has elected under section 5011 to be treated as a bonded dealer.

"(17) CONTROL STATE ENTITY.—The term 'control State entity' means a State, a political subdivision of a State, or any instrumentality of such a State or political subdivision, in which only the State, political subdivision, or instrumentality is allowed under applicable law to perform distilled spirit operations.".

(b) ELECTION TO BE TREATED AS A BONDED DEALER.—Subpart A of part I of subchapter A of chapter 51 (relating to distilled spirits) is amended by adding at the end the following:

"SEC. 5011. ELECTION TO BE TREATED AS BONDED DEALER.

"(a) ELECTION.—Any wholesale dealer or any control State entity may elect, at such time and in such manner as the Secretary shall prescribe, to be treated as a bonded dealer if such wholesale dealer or entity sells bottled distilled spirits exclusively to a wholesale dealer in liquor, to an independent retail dealer subject to the limitation set forth in subsection (b), or to another bonded dealer.

"(b) LIMITATION IN CASE OF SALES TO RETAIL DEALERS.—

"(1) BY BONDED DEALER.—Any person, other than a control State entity, who is a bonded dealer shall not be considered as selling to an independent retail dealer if—

"(A) the bonded dealer has a greater than 10 percent ownership interest in, or control of, the retail dealer;

"(B) the retail dealer has a greater than 10 percent ownership interest in, or control of, the bonded dealer; or

"(C) any person has a greater than 10 percent ownership interest in, or control of, both the bonded and retail dealer.

For purposes of this paragraph, ownership interest, not limited to stock ownership, shall be attributed to other persons in the manner prescribed by section 318.

"(2) BY CONTROL STATE ENTITY.—In the case of any control State entity, subsection (a) shall be applied by substituting 'retail dealer' for 'independent retail dealer'.

"(c) INVENTORY OWNED AT TIME OF ELECTION.—Any bottled distilled spirits in the inventory of any person electing under this section to be treated as a bonded dealer shall, to the extent that the tax under this chapter has been previously determined and paid at the time the election becomes effective, not be subject to such additional tax on such spirits as a result of the election being in effect.

"(d) REVOCATION OF ELECTION.—The election made under this section may be revoked by the bonded dealer at any time, but once revoked shall not be made again without the consent of the Secretary. When the election is revoked, the bonded dealer shall immediately withdraw the distilled spirits on determination of tax in accordance with a tax payment procedure established by the Secretary.

"(e) EQUITABLE TREATMENT OF BONDED DEALERS USING LIFO INVENTORY.—The Secretary shall provide such rules as may be necessary to assure that taxpayers using the last-in, first-out method of inventory valuation do not suffer a recapture of their LIFO reserve by reason of making the election under this section or by reason of operating a bonded wine cellar as permitted by section 5351.

"(f) APPROVAL OF APPLICATION.—Any person submitting an application under section

5171(c) and electing under this section to be treated as a bonded dealer shall be entitled to approval of such application to the same extent such person would be entitled to approval of an application for a basic permit under section 104(a)(2) of the Federal Alcohol Administration Act (27 U.S.C 204(a)(2)), and shall be accorded notice and hearing as described in section 104(b) of such Act (27 U.S.C. 204(b)).".

(c) CONFORMING AMENDMENT.—The tables of sections of subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following:

"Sec. 5011. Election to be treated as bonded dealer.".

SEC. 6. DETERMINATION OF TAX.

The first sentence of section 5006(a)(1) (relating to requirements) is amended to read as follows: "Except as otherwise provided in this section, the tax on distilled spirits shall be determined when the spirits are transferred from a distilled spirits plant to a bonded dealer or are withdrawn from bond.".

SEC. 7. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

Section 5008 (relating to abatement, remission, refund, and allowance for loss or destruction of distilled spirits) is amended—

(1) in subsections (a)(1)(A) and (a)(2), by inserting "bonded dealer," after "distilled spirits plant," both places it appears;

(2) in subsection (c)(1), by striking "of a distilled spirits plant"; and

(3) in subsection (c)(2), by striking "distilled spirits plant" and inserting "bonded premises".

SEC. 8. TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Section 5061(d) (relating to time for collecting tax on distilled spirits, wines, and beer) is amended by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following:

"(5) ADVANCED PAYMENT OF DISTILLED SPIRITS TAX.—Notwithstanding the preceding provisions of this subsection, in the case of any tax imposed by section 5001 with respect to a bonded dealer who has an election in effect on September 20 of any year, any payment of which would, but for this paragraph, be due in October or November of that year, such payment shall be made on such September 20. No penalty or interest shall be imposed for the period from such September 20 until the due date determined without regard to this paragraph to the extent that tax due exceeds the tax which would have been due with respect to distilled spirits in the preceding October and November had the election under section 5011 been in effect.".

(b) CONFORMING AMENDMENT.—Section 5061(e)(1) (relating to payment by electronic fund transfer) is amended by inserting "or any bonded dealer," after "respectively,".

SEC. 9. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLICABLE.

Section 5113(a) (relating to sales by proprietors of controlled premises) is amended by adding at the end the following: "This subsection shall not apply to a proprietor of a distilled spirits plant whose premises are used for operations of a bonded dealer.".

SEC. 10. CONFORMING AMENDMENTS.

(1) Section 5003(3) is amended by striking "certain".

(2) Section 5214 is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following:

"(b) EXCEPTION.—Paragraphs (1), (2), (3), (5), (10), (11), and (12) of subsection (a) shall not apply to distilled spirits withdrawn from premises used for operations as a bonded dealer.".

(3) Section 5215 is amended—

(A) in subsection (a), by striking "the bonded premises" and all that follows through the period and inserting "bonded premises.";

(B) in the heading of subsection (b), by striking "A DISTILLED SPIRITS PLANT" and inserting "BONDED PREMISES"; and

(C) in subsection (d), by striking "a distilled spirits plant" and inserting "bonded premises".

(4) Section 5362(b)(5) is amended by adding at the end the following: "The term does not mean premises used for operations as a bonded dealer.".

(5) Section 5551(a) is amended by inserting "bonded dealer," after "processor" both places it appears.

(6) Subsections (a)(2) and (b) of section 5601 are each amended by inserting ", bonded dealer," before "or processor" .

(7) Paragraphs (3), (4), and (5) of section 5601(a) are each amended by inserting "bonded dealer," before "or processor" .

(8) Section 5602 is amended—

(A) by inserting ", warehouseman, processor, or bonded dealer" after "distiller"; and

(B) in the heading, by striking "**by distiller**".

(9) Sections 5115, 5180, and 5681 are repealed.

(10) The table of sections for part II of subchapter A of chapter 51 is amended by striking the item relating to section 5115.

(11) The table of sections for subchapter B of chapter 51 is amended by striking the item relating to section 5180.

(12) The item relating to section 5602 in the table of sections for part I of subchapter J of chapter 51 is amended by striking "by distiller".

(13) The table of sections for part IV of subchapter J of chapter 51 is amended by striking the item relating to section 5681.

SEC. 11. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act take effect on the date which is 120 days after the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) ESTABLISHMENT OF DISTILLED SPIRITS PLANT.—The amendments made by section 3 take effect on the date of enactment of this Act.

(2) SPECIAL RULE.—Each wholesale dealer who is required to file an application for registration under section 5171(c) of the Internal Revenue Code of 1986 whose operations are required to be covered by a basic permit under sections 103 and 104 of the Federal Alcohol Administration Act (27 U.S.C. 203, 204) and who has received such basic permits as an importer, wholesaler, or as both, and has obtained a bond required under subchapter B of chapter 51 of subtitle E of such Code before the close of the fourth month following the date of enactment of this Act, shall be qualified to operate bonded premises until such time as the Secretary of the Treasury takes final action on the application. Any control State entity (as defined in section 5002(a)(17) of such Code, as added by section 5(a)) that has obtained a bond required under such subchapter shall be qualified to operate bonded premises until such time as the Secretary of the Treasury takes final action on the application for registration under section 5171(c) of such Code.•

By Ms. MIKULSKI (for herself and Mr. SARBANES):

S. 396. A bill to amend titles 5 and 37, United States Code, to provide for the continuance of pay and the authority to make certain expenditures and obligations during lapses in appropriations; to the Committee on Governmental Affairs.

THE FEDERAL EMPLOYEE COMPENSATION PROTECTION ACT

Mr. President, today I am introducing an important piece of legislation called the Federal Employee Compensation Protection Act.

With the 1995 to 1996 Government shutdown fresh in our minds, I think it is crucial that we take steps in this Congress to keep faith with our Federal employees and make sure they are never again sent home without pay. My bill will keep that faith by protecting Federal employee pay and benefits during a future Government shutdown. This bill ensures that Federal employees in Maryland and across the Nation will be able to make their mortgage payments, put food on the table, and provide for their families during a shutdown.

The last shutdown of the Federal Government severely disrupted the lives of thousands of Federal employees and their families. In my State of Maryland alone, there are more than 280,000 Federal employees. They are some of the most dedicated and hard-working people in America today. These employees have devoted their careers and lives to public service, and they should not have been used as pawns in a game of political brinkmanship.

During the last several years, Federal employees have endured their fair share of hardship. Downsizing, diet COLA's, delayed COLA's, and attacks on pensions and health benefits have damaged morale at nearly every Federal agency. These assaults must stop. We cannot continue to denigrate and downgrade Federal employees and at the same time expect Government to work more efficiently.

I urge my colleagues to support this legislation and also work to prevent any future shutdowns of our Government. We have a contract with our Federal employees, and we should encourage their dedication by ensuring that the contract is honored and their pay and benefits are not put in jeopardy.•

• Mr. SARBANES. Mr. President, I am pleased to join my colleague from Maryland, Senator MIKULSKI, in introducing this important legislation to ensure the protection of Federal employee pay and benefits in the event of a furlough.

We have a responsibility to the men and women who have dedicated themselves to public service and I would hope that my colleagues would join Senator MIKULSKI and me in our ongoing effort to maintain the Federal Government's commitment to its dedicated work force.

Federal workers have just experienced the most difficult Congress in recent history. Federal employees became hostages in the budget battle which resulted in two successive Government shutdowns. At this time last year, Federal employees were in a constant state of anxiety—concerned about the future of their jobs, whether they would be laid off or have to work without pay, all as their workloads continued to accumulate. Despite this tremendous pressure and the constant attacks on their pay and earned benefits, Federal workers continue to provide consistent, quality service on behalf of all Americans.

As I have stated many times before, Federal employees have already made significant sacrifices in past years in the form of downsizing efforts, delayed and reduced cost of living adjustments, and other reductions in Federal employee pay and benefits. It is, in my view, critical that we protect Federal employees from the type of senseless abuse they endured during the Government shutdowns last Congress. Federal workers should never again find themselves in a situation where, through no fault of their own, they may have to either work without pay or be prohibited from coming to work at all.

Mr. President, Federal employees have made a choice to serve their country and we should respect and reward that choice by supporting these hard-working, dedicated individuals. Through the legislation Senator MIKULSKI and I are reintroducing today, we will continue to send the message to the Federal work force and to all American citizens that Congress honors and values the commitment those who work for the Government have made.•

By Ms. MIKULSKI (for herself and Mr. LEAHY):

S. 397. A bill to amend chapters 83 and 84 of title 5, United States Code, to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers, to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the U.S. Customs Service, and revenue officers of the Internal Revenue Service; to the Committee on Governmental Affairs.

THE HAZARDOUS OCCUPATIONS RETIREMENT BENEFITS ACT OF 1997

• Ms. MIKULSKI. Mr. President, today I introduce the Hazardous Occupations Retirement Benefits Act of 1997.

This legislation will grant an early retirement package for revenue officers of the Internal Revenue Service, customs inspectors of the U.S. Customs Service, and immigration inspectors of the Immigration and Naturalization Service.

Under current law, with the exception of the groups listed in this legislation, all Federal law enforcement officers and firefighters are eligible to retire at age 50 with 20 years of Federal service. This legislation will amend the current law and finally grant the same 20-year retirement to these members of the Internal Revenue Service, Customs Service, and Immigration and Naturalization Service. The employees under this bill have very hazardous, physically taxing occupations, and it is in the public's interest to tenure a young and competent work force in these jobs.

The need for a 20-year retirement benefit for inspectors of the Customs Service is easily apparent. These employees are the country's first line of defense against terrorism and the smuggling of illegal drugs at our borders. They have the authority to apprehend those engaged in such activities and carry a firearm on the job. They are responsible for the majority of arrests performed by Customs Service employees. In 1994, inspectors of the Customs Service seized 204,000 pounds of cocaine, 2,600 pounds of heroin, and 559,000 pounds of marijuana. They are required to undergo the same law enforcement training as all other law enforcement personnel. These employees face multiple challenges. They confront leading criminals in the drug war, organized crime figures, and increasingly sophisticated white-collar criminals.

Revenue officers struggle with heavy workloads and a high rate of job stress, resulting in a variety of physical and mental symptoms. Many IRS employees must employ pseudonyms to hide their identity because of the great threat to their personal safety. The Internal Revenue Service has put out a manual for their employees entitled: "Assaults and Threats: A Guide to Your Personal Safety" to help employees respond to hostile situations. The document advises IRS employees how to handle on-the-job assaults, abuse, threatening telephone calls, and other menacing situations.

Mr. President, this legislation is cost effective. Any cost that is created by this act is more than offset by savings in training costs and increased revenue collection. A 20-year retirement bill for these employees will reduce turnover, increase yield, decrease employee recruitment and development costs, and enhance the retention of a well-trained and experienced work force.

I urge my colleagues to join me again in this Congress in expressing support for this bill and finally getting it enacted. This bill will improve the effectiveness of our inspector and revenue officer work force to ensure the integrity of our borders and proper collection of the taxes and duties owed to the Federal Government.•

By Mrs. MURRAY:

S. 398. A bill to amend title 49, United States Code, to require the use of child restraint systems approved by the Secretary of Transportation on commercial aircraft, and for other purposes; to the Committee on Commerce, Science, and Transportation.

AIRLINE CHILDREN'S SAFETY LEGISLATION

• Mrs. MURRAY. Mr. President I introduce legislation that would protect our Nation's small children as they travel on aircraft. We currently have Federal regulations that require the safety of passengers on commercial flights. However, neither flight attendants nor an infant's parents can protect unrestrained infants in the event of an airline accident or severe turbulence. A child on a parent's lap will likely break free from the adult's arms as a plane takes emergency action or encounters extreme turbulence.

This child then faces two serious hazards. First, the child may be injured as they strike the aircraft interior. Second, the parents may not be able to find the infant after a crash. The United Sioux City, IA, crash provides one dark example. On impact, no parent was able to hold on to her-his child. One child was killed when he flew from his mother's hold. Another child was rescued from an overhead compartment by a stranger.

In July 1994, during the fatal crash of a USAir plane in Charlotte, NC, another unrestrained infant was killed when her mother could not hold onto her on impact. The available seat next to the mother survived the crash intact. The National Transportation Safety Board believes that had the baby been secured in the seat, she would have been alive today. In fact, in a FAA study on accident survivability, the agency found that of the last nine infant deaths, five could have survived had they been in child restraint devices.

Turbulence creates very serious problems for unrestrained infants. In four separate incidences during the month of June, passengers and flight attendants were injured when their flights hit sudden and violent turbulence. In one of these, a flight attendant reported that a baby seated on a passenger's lap went flying through the air during turbulence and was caught by another passenger. This measure is endorsed by the National Transportation Safety Board and the Aviation Consumer Action Project.

We must protect those unable to protect themselves. Just as we require seatbelts, motorcycle helmets, and car seats, we must mandate restraint devices that protect our youngest citizens. I urge my colleagues to support this legislation that ensures our kids remain passengers and not victims.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 398

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CHILD SAFETY RESTRAINT SYSTEMS ON COMMERCIAL AIRCRAFT.

(a) IN GENERAL.—Chapter 447 of title 49, United States Code, is amended by adding at the end the following new section:

"§ 44725. Child safety restraint systems

"(a) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Secretary of Transportation shall issue regulations requiring the use of child safety restraint systems that have been approved by the Secretary on any aircraft operated by an air carrier in providing interstate air transportation, intrastate air transportation, or foreign air transportation.

"(b) AGE OR WEIGHT LIMITS.—The regulations issued under this section shall establish age or weight limits for children who use the child safety restraint systems.".

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 447 of title 49, United States Code, is amended by adding at the end the following new item:

"44725. Child safety restraint systems.".

SEC. 2. INTERNATIONAL STANDARD.

It is the sense of Congress that the United States representative to the International Civil Aviation Organization should seek an international standard to require that passengers on a civil aviation aircraft be restrained—

(1) on takeoff and landing; and

(2) when directed by the captain of such aircraft.●

By Mr. MCCAIN:

S. 399. A bill to amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 to establish the U.S. Institute for Environmental Conflict Resolution to conduct environmental conflict resolution and training, and for other purposes; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ACT OF 1997

● Mr. MCCAIN. Mr. President, I introduce legislation to promote fair, timely and efficient resolution of our Nation's environmental disputes.

This bill would establish, within the Morris K. Udall Foundation, the United States Institute for Environmental Conflict Resolution. The institute would offer alternative dispute resolution services, including assessment, mediation, and other related services, to facilitate parties in resolving environmental disputes without resorting to protracted and costly litigation in the courts. I ask unanimous consent that a summary of the legislation be included in the RECORD at the conclusion of my statement.

This legislation simply gives the Udall Foundation the means to do what Congress asked it to do 5 years ago. When the Udall Foundation was established in 1992, it was charged with the task of establishing a program for environmental dispute resolution. Since then, the foundation has sponsored seminars and workshops on conflict resolution. But it has lacked the funding and explicit direction that would enable it to run a program that could provide conflict resolution services. This bill provides both the direction and the authorization for funding.

It is particularly fitting that an institute devoted to environmental conflict resolution would operate under the auspices of the Udall Foundation. Morris K. Udall's career was distinguished by his integrity, service, and commitment to consensus-building.

I had the distinct pleasure of working with Mo Udall on one of his greatest legislative achievements—the Arizona Wilderness Act. That act protects 2.5 million acres in the Arizona wilderness in perpetuity and was passed thanks, in large part, to Mo Udall's efforts to achieve consensus within the Arizona delegation.

Using Mo Udall's success in passing the Arizona Wilderness Act as its model, the U.S. Environmental Conflict Resolution Institute at the Udall Foundation would seek to promote our nation's environmental policy objectives by reaching out to achieve consensus rather than pursuing resolution through adversarial processes.

Mr. President, over 5,000 Federal court decisions on environmental litigation have been handed down in the past two decades. Today, some 400 to 500 environmental lawsuits are filed each year in Federal courts. In its 16th annual report, the Council on Environmental Quality estimated that fully 85 percent of Environmental Protection Agency regulations are challenged at some time in the courts, either by groups that find the rules too stringent or by groups that believe them to be too lax. In short, resorting to the courts is all too common in disputes over environmental issues.

This bill seeks to move our Nation away from this litigious trend by providing an alternative conflict resolution process. This process is intended to preclude the need for lawsuits by engaging the parties in professionally mediated discussions. It could also be used as a solution of last resort, if the parties agreed to put aside litigation already filed in the courts and instead utilize the services of the institute.

The benefits to be gained by the Federal Government through a national environmental dispute resolution program include more than litigation cost savings. Delay associated with litigation can also prevent the timely enforcement of our environmental laws.

For more than ten years, I have been working to promote safety and quiet in Grand Canyon National Park. This issue, as well as any other, exemplifies how alternative dispute resolution could perhaps help us achieve national environmental policy objectives far better than litigation.

In 1987, legislation I authored to promote safety and provide for the substantial restoration of natural quiet in the Grand Canyon was signed into law. Ten years later, the Federal Aviation Administration [FAA] this year issued a final rule on overflights over the Grand Canyon. This rule was scheduled to go into effect on May 1, 1997. However, despite the substantial time and effort that both the FAA and the National Park Service have put into this rulemaking, including consultations with many outside interests, lawsuits have now been filed challenging the rule and delaying its implementation.

Mr. President, I do not mention this to criticize those who have exercised their right to file suit in the Grand Canyon overflights matter. I refer to this situation because it concerns me that protecting the Grand Canyon could be significantly delayed through litigation, when the parties might reach a more timely and mutually acceptable resolution if they were provided an opportunity to work through their differences in a nonadversarial forum. The institute created by this legislation would provide an alternative to litigation in this and similar situations and create an opportunity for more constructive problem-solving and effective policymaking.

One hundred twenty-six years ago, Abraham Lincoln wisely counseled:

Discourage litigation, persuade your neighbor to compromise whenever you can. Point out to them how the nominal winner is often the real loser in fees, expenses, and waste of time.

That advice could not be more sound today as we seek to resolve our Nation's environmental conflicts and to promote timely and effective implementation of laws and regulations to protect and preserve our natural environment.

I am pleased that the Council on Environmental Quality has registered their support for the goals and concepts in this bill. In addition, the Udall Foundation, the Grand Canyon Trust, the National Parks and Conservation Association, Friends of the Earth, and Trout Unlimited have given their support to this effort. I ask unanimous consent that copies of support letters from these groups be included in the RECORD.

I urge my colleagues to join me and support this legislation that would bring common sense and efficiency to the resolution of our Nation's environmental disputes.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL POLICY AND CONFLICT RESOLUTION ACT OF 1997

Purpose: To establish, within the Morris K. Udall Foundation, the United States Institute for Environmental Conflict Resolution to assist in implementing national environmental policy. The Institute would provide alternative dispute resolution services, including assessment, mediation, and other services, to facilitate resolving environmental disputes without litigation.

Bill authorizes use of the Institute by Federal agencies:

Federal agencies could use the Institute's conflict resolution services for a fee.

Bill creates a revolving fund to:

Fund operations and fully support the Institute through a one-time $3 million appropriation.

Receive fees from parties using the Institute's services.

Supplement an annual appropriation for a five-year period beginning in 1998.

The Council on Environmental Quality would:

Receive notification when a federal agency requests to use the Institute's services.

Concur in any request to use the Institute's services for interagency dispute resolution.

The Institute would be under the Udall Foundation because:

One purpose for which the Udall Foundation was established in 1992 was to establish a program for environmental conflict resolution.

The Udall Foundation has hosted seminars, workshops and research related to environmental dispute resolution but, has lacked funding to provide mediation services.

Conflict resolution and consensus building were major themes of Udall's thirty year public career as a member of the House of Representatives.

S. 399—SECTION-BY-SECTION SUMMARY

Section 1: Short title—"The Environmental Policy and Conflict Resolution Act of 1997".

Section 2: Definition of Terms.

Section 3: Adds the Chair of the Council on Environmental Quality as an ex officio nonvoting member of the Udall Foundation Board.

Section 4: Bill Purpose: To establish as part of the Udall Foundation the U.S. Institute for Environmental Conflict Resolution (Institute) to assist the Federal Government in implementing national environmental policy.

The Institute would provide assessment, mediation and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States.

Section 5: Authorizes the Udall Foundation to establish the Institute and provide assessment, mediation, and other alternative dispute resolution services.

Section 6: Revolving Fund:

Creates a Revolving Fund for the Institute to operate. The revolving fund would be administered by the Udall Foundation and would be maintained separately from the Trust Fund established for scholarships awarded by the Udall Foundation.

Section 7: Use of the Institute by a Federal Agency:

Authorizes use of the Institute by a federal agency which may enter into a contract to expend funds for the use of the Institute's services. Any funds spent by an agency on the Institute would go into the Revolving Fund.

Requires concurrence by the Council on Environmental Quality (CEQ) for two agencies to seek to resolve a dispute at the Institute. CEQ would be notified of any agency request to use the Institute's services.

Section 8: Authorization of Appropriations:

Authorizes a one-time appropriation of $3 million to the Revolving Fund for fiscal year 1998 and $2.1 million in appropriations over a 5 year period beginning in 1998 to fully operate the Institute.

The Revolving Fund would be replenished by fees from parties using the Institute's services.

Section 9: Conforming amendments.

EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL ON ENVIRONMENTAL QUALITY

Washington, DC, March 5, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: Thank you for requesting the Administration's views on your draft legislation entitled the "Environmental Policy and Conflict Resolution Act of 1997."

The legislation represents a commendable effort to assist private entities and government in resolving environmental and natural resource conflicts by expanding the range of services available from the Morris K. Udall Foundation to include resolution of disputes involving federal agencies. The Administration supports the concepts and goals embodied in your legislation. However, the Administration needs to complete its review of the bill language prior to providing a comprehensive Administration position. We expect to provide additional comments on the bill in the near future.

As you know, last September, the President awarded the Medal of Freedom to Congressman Udall. The President's remarks at the time bear repeating:

"During a remarkable 30-year career, Morris Udall was a quiet giant of the Congress. Warm, funny, and intelligent, he was truly a man of the center, who forged consensus by listening to others and by reasoned argument. His landmark achievements—such as reforming campaign finance, preserving our forests, safeguarding the Alaskan wilderness, and defending the rights of Native Americans—were important indeed. But he distinguished himself above all as a man to whom others—leaders—would turn for judgment, skill, and wisdom. Mo Udall is truly a man for all seasons and a role model for what is best in American democracy."

It is entirely fitting to ask the institution established by Congress in Congressman Udall's name to help with the hard job of helping people solve their disagreements over the lands, waters, and resources we all share and must steward responsibly. This Administration has made every effort to break down the barriers between government and citizens. Voluntary mechanisms to enhance communication and understanding within government and between agencies and the people they serve can assist meaningfully in this regard.

I appreciate your willingness to incorporate provisions that recognize the important dispute resolution purposes of the National Environmental Policy Act and the inter-agency coordination function of the President's Council on Environmental Quality.

The Administration would be pleased to work with you as your legislation proceeds.

Sincerely,

KATHLEEN A. MCGINTY,
Chair.

NATIONAL PARKS AND CONSERVATION ASSOCIATION, FRIENDS OF THE EARTH,

March 5, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: The National Parks and Conservation Association and Friends of the Earth are pleased to endorse the concept of a U.S. Institute for Environmental Conflict Resolution, the subject of legislation you intend to introduce on March 5.

Resolving environmental disputes before they reach the litigation stage is a goal we strongly support. Your legislation would enable federal agencies to solve disputes among themselves or with other non-federal parties by using the institute's staff for mediation and other services.

In general, we believe litigation should be the last resort in enforcing or upholding our environmental laws, provided that negotiated agreements clearly adhere to statutory mandates. We also believe negotiated solutions, in general, allow disputants more creativity and flexibility to solve problems and issues in cost effective ways.

Many environmental disputes, including those involving our national parks, could be resolved by good-faith negotiations led by an honest broker. The unfolding case of buffalo management in Yellowstone is a case in point. Here, a lawsuit filed by Montana against two federal agencies has precipitated the killing of almost one third of Yellowstone's buffalo herd. A court order is driving the slaughter. Although this wildlife tragedy is abhorred by all of the parties involved, collectively they did nothing effective to prevent it. In retrospect, it is clear that the slaughter might have been avoided had the parties committed themselves to good faith negotiations years ago when the issue first emerged.

Thank you for your leadership on environmental issues generally and for your constructive approach to conflict resolution.

Sincerely,

PAUL C. PRITCHARD,
President, National Parks and Conservation Association.
BRENT BLACKWELDER,
President, Friends of the Earth.

TROUT UNLIMITED,

Washington, DC, March 5, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Russell,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of Trout Unlimited's 95,000 members nationwide, I am writing to support the bill that you intend to introduce today. The bill would amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 by establishing a new environmental conflict resolution program within the Morris K. Udall Foundation. We believe the new conflict resolution program holds great promise for resolving the intractable environmental disputes that continue to plague federal natural resources agencies and other interests involved with federal environmental laws.

The mission of Trout Unlimited is to conserve, protect and restore North America's trout and salmon resources and the watersheds on which they depend. Our work often takes us into difficult environmental conflicts involving many federal agencies. Over the past two decades, we have been deeply involved in disputes regarding implementation of the Endangered Species Act, the Clean Water Act, and the federal land management laws, in which federal agencies have had very difficult conflicts. Failure to resolve these conflicts in a timely fashion has adversely affected trout and salmon resources. We are particularly hopeful that the

new interagency conflict resolution mechanism proposed by your bill will yield a new and better way of resolving these disputes.

We salute your authorship of the bill and look forward to working with you to get it enacted.

Sincerely,

STEVE MOYER,
Director, Government Affairs.

MORRIS K. UDALL FOUNDATION,
Tucson, AZ, March 3, 1997.

Hon. JOHN MCCAIN,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: It gives me great pleasure as Chairman of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation to inform you that the trustees unanimously and enthusiastically endorse your unique concept for the creation of the United States Institute for Environmental Dispute Resolution as part of the Udall Foundation.

As you know, federal agencies have been increasingly involved in environmental disputes as parties to lawsuits based upon their regulatory actions. Continuing to wage these conflicts in the costly and time-consuming arena of the courts drains federal resources and can serve to delay federal actions to protect the environment. Alternative forms of environmental conflict resolution for federal agencies are needed to prevent these and other adverse effects associated with protracted litigation.

Since it began in May 1995, the Udall Foundation has worked to create a national environmental conflict resolution program, as directed in its authorizing legislation. The Foundation has sponsored workshops and seminars on environmental conflict resolution and has begun funding several research projects.

On April 4–5, 1997, the Foundation will host "Environmental Conflict Resolution in the West" in Tucson, Arizona. This will be the largest gathering of its kind. Several hundred people from around the country, including professional mediators, facilitators, researchers, and federal, state and local agency officials are expected to attend this conference to discuss alternative approaches to environmental dispute resolution and collaborative problem solving.

Despite these efforts, the Foundation has lacked the funding to directly pursue conflict resolution by providing mediation and other services to resolve environmental disputes. The legislation you are introducing will finally enable the Foundation to provide a program to conduct environmental conflict resolution at the national level.

We believe that your legislation will allow the Foundation, through the U.S. Institute for Environmental Conflict Resolution, to make a positive impact on the cost and pace of environmental dispute resolution for years to come. The Foundation is prepared to do all it can to establish a program committed to helping to resolve these conflicts fairly and as efficiently as possible.

Sincerely,

TERRENCE L. BRACY,
Chairman.

GRAND CANYON TRUST,
Washington, DC, March 4, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: On behalf of the Trustees of the Grand Canyon Trust, a conservation organization dedicated to the conservation of the Grand Canyon and Colorado Plateau, I am pleased to endorse and offer our support for your bill creating the United States Institute for Environmental Conflict Resolution.

The Trust has long held that many conflicts that arise from differences between parties regarding environmental policy and regulation could best be solved through mediation and alternative dispute resolution rather than in courts of law. Too often the will of the American public to protect our natural resources and ecological treasures is lost amid posturing and polarization by parties embroiled in conflict over environmental issues. We believe that your legislation will enable the United States Institute for Environmental Conflict Resolution to actively mediate and conduct environmental conflict resolution in a positive, constructive manner.

The Grand Canyon Trust pledges to work in concert with the Morris K. Udall Foundation and the United States Institute for Environmental Conflict Resolution in every possible way to support and ensure its success. Thank you again for your vision and leadership on this difficult issue.

Sincerely,

GEOFFREY S. BARNARD,
President.

MORRIS K. UDALL FOUNDATION,
Tucson, AZ, January 17, 1997.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I am pleased to report that the Board of Trustees of the Morris K. Udall Foundation has unanimously endorsed your proposal to create an institution for environmental conflict resolution within our jurisdiction. The board reviewed in detail both the concept and the financials and is in agreement with the draft bill provided by your staff.

The board expressed tremendous enthusiasm for your concept and we look foward to helping in any way that you wish.

Attached is the resolution that was passed.

Sincerely,

TERRENCE L. BRACY,
Chairman.

Enclosure.

RESOLUTION

The Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation commends Arizona Senator John McCain for his originality and initiative in introducing a bill to establish the United States Institute for Environmental Conflict Resolution as part of the Udall Foundation.

The Trustees enthusiastically endorse this unique concept to contract with other Federal agencies to resolve disputes or conflicts related to the environment, public lands or natural resources and congratulate Senator McCain for recognizing the need for such an entity.•

By Mr. GRASSLEY:

S. 400. A bill to amend rule 11 of the Federal Rules of Civil Procedure, relating to representations in court and sanctions for violating such rule, and for other purposes; to the Committee on the Judiciary.

THE FRIVOLOUS LAWSUIT PREVENTION ACT OF 1997

• Mr. GRASSLEY. Mr. President, I rise today to introduce important tort reform legislation. Tort reform is needed for many reasons—one of which is to free our courts of frivolous lawsuits. Frivolous lawsuits take the courts' time away from trying legitimate lawsuits, and deprive the truly injured of timely resolution of their claims.

Mr. President, our courts are supposed to be venues for resolving disputes. Lawsuits are supposed to be the means by which injured parties seek relief—they are not intended to be used as weapons to harass, delay, or increase the cost to the other party. Too often entire lawsuits, or claims within ongoing lawsuits, are used as weapons. The bill that I introduce today takes a stab at these lawsuits. It toughens the penalties for filing frivolous lawsuits and insures that if someone files a frivolous lawsuit, that someone will pay.

Our front-line defense against this misuse of the legal system is rule 11 of the Federal Rules of Civil Procedure. This rule is intended to deter frivolous lawsuits by sanctioning the offending party. The power of rule 11 was diluted in 1993. This weakening is unacceptable to those of us who want to preserve courts as neutral forums for dispute resolution and who believe that lawsuits are not weapons of revenge, but a means for an injured party to gain relief.

Senator Brown introduced a bill very similar to this legislation in the last Congress. The Senate adopted the text of his bill as an amendment to the Common Sense Product Liability and Legal Reform Act. His amendment passed by a vote of 56 to 37.

The bill that I am introducing today is similar, but not identical to Senator Brown's bill. The civil rights community raised some concerns with his bill, and my version of the legislation is responsive to these concerns. The provision that was opposed reinstated the rule 11 requirement that allegations contained in motions and other court papers be well grounded in fact when filed, rather than allowing a "reasonable opportunity for further investigation or discovery." Unlike Senator Brown's bill, my bill does not change this subsection of rule 11.

My bill does take strong steps to thwart frivolous lawsuits. First, my bill makes sanctions for the violation of this rule mandatory. One of the most harmful changes that took effect in 1993 was to make sanctions for proven violations of this rule permissive. This means that if a party files a lawsuit simply to harass another party, and the court decides that this is in fact the case, the offending party still might not be sanctioned. This is unacceptable. The offending party might not be punished at all, which provides no deterrence for this offending party or anyone else who wants to misuse the courts. My bill reinstates the requirement that if there is a violation of this rule, there are sanctions.

My bill also removes the limitation on sanctions, and allows sanctions to be paid to the injured party for more than attorneys' fees and expenses. In addition, this legislation allows the sanctioning of attorneys for arguing for an extension of current law if their actions violate this rule. Again, if the rule is violated, there needs to be sanctions.

Mr. President, this bill will not, by itself, stop the misuse of our courts. It is, however, a good first step. It is a necessary step. It is a bill that we must pass to sanction those who use the legal system to harass and torment others. That is not what the courts were established to do. We must protect the integrity of the courts and preserve them for proper use.●

By Mr. JEFFORDS:

S. 401. A bill to improve the control of outdoor advertising in areas adjacent to the Interstate System, the National Highway System, and certain other federally assisted highways, and for other purposes; to the Committee on Finance.

THE SCENIC HIGHWAY PROTECTION ACT

● Mr. JEFFORDS. Mr. President, today I introduce the Scenic Highway Protection Act, legislation that will control billboard blight and put a stop to the policies that have actually encouraged billboard construction and destroyed rural vistas across America. Every year hundreds of miles of rural scenery disappear, millions of taxpayer dollars are spent, and thousands of trees on public lands are unnecessarily cut. Why? Because billboards continue to proliferate along our Nation's highways.

During debate on the National Highway System Act in 1995, billboard proponents pushed an amendment that would have forced States and localities to allow billboards on Federal aid highways. Fortunately, this proposal was defeated. My legislation attempts to give States the necessary tools to regulate and end the growth of billboards and protects the strict billboard controls enacted in Vermont and many other States.

In the coming months, Congress will consider reauthorization of the Nation's transportation law, the Intermodal Surface Transportation and Efficiency Act. Proponents of billboard proliferation will most likely try again to override State billboard control laws. This time, we are prepared to enact legislation that will reduce and control billboards nationwide. My legislation will send a signal to billboard owners that America is ready to end uncontrolled billboard blight.

The language in my bill will place a permanent freeze on the number of new billboards placed along Federal aid highways. for a new billboard to go up, an old one must come down. The legislation will also prohibit billboards in unzoned areas, eliminating the ability to randomly place billboards in rural America. My bill will end the practice of cutting trees on public lands for the sole purpose of better billboard visibility and reinstate the requirement that Federal and State funds be used to remove billboards when communities decide the sign violates local zoning laws. Finally, the legislation will place a 15-percent gross revenue tax on all billboards, ending the free ride for billboards. The money will be used to remove billboards in our Nation's most scenic areas.

This legislation will move the 1965 Highway Beautification Act closer to its original intent of preserving the public's investment in our highways by protecting scenic areas and natural resources. Let us end the taxpayer subsidized proliferation of billboards.●

By Mr. GORTON (for himself and Mrs. MURRAY):

S. 402. A bill to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District; to the Committee on Energy and Natural Resources.

SETTLEMENT AUTHORIZATION LEGISLATION

● Mr. GORTON. Mr. President, today I introduce legislation that will authorize a settlement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District in Washington State. I introduced similar legislation last year. Congressman DOC HASTINGS has introduced legislation on this subject in the House of Representatives, and the House Resources Committee will mark up the legislation today.

This legislation will authorize a carefully negotiated settlement between the BOR and the Oroville-Tonasket Irrigation District. If enacted, this legislation will save the BOR, and therefore the Nation's taxpayers, money that would otherwise be spent fighting with the irrigation district in court.

Earlier this week the administration sent a letter to me indicating that it would support the settlement bill, provided that several changes be made to the legislation. The legislation that I introduce today includes the changes requested by the administration. At this time, I ask unanimous consent to include a copy of the administration's letter of support for the legislation in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
Washington, DC, March 3, 1997.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: Thank you for your letter requesting the Administration's views on H.R. 412.

The Bureau of Reclamation has executed a settlement agreement with the Oroville-Tonasket Irrigation District (District) in preference to litigation over construction of the Oroville-Tonasket (O–T) Unit Extension. The settlement agreement provides that its terms will not become effective unless Congress enacts authorizing legislation by April 15, 1997.

While the Administration supports implementing the settlement agreement, it can only support H.R. 412 if the amendments shown on the attached page are adopted. These amendments are needed to clarify that the transfer of title will not affect the repayment obligation of the Bonneville Power Administration (BPA) for irrigation assistance, and that the settlement agreement will not affect the District's obligation to continue to pay BPA wheeling charges. In addition, the amendments are needed to deauthorize the project irrigation works upon transfer of title. The Administration strongly encourages the adoption of these amendments, which are consistent with the intent of the settlement agreement.

Thank you for your interest in the Oroville-Tonasket Claims Settlement and Conveyance Act. If you have any questions, please call 208–4501.

Sincerely,

ELUID L. MARTINEZ,
Commissioner.

AMENDMENTS TO H.R. 412

1. At the end of section 5, insert the following new subsection (c):

"(c) PROJECT CONSTRUCTION COSTS.—The transfer of title authorized by this Act shall not affect the timing or amount of the obligation of the Bonneville Power Administration for the repayment of construction costs incurred by the Federal government under Section 202 of the Act of September 28, 1976 (90 Stat. 1325) that the Secretary of the Interior has determined to be beyond the ability of the irrigators to pay. The obligation shall remain charged to and be returned to the Reclamation Fund as provided for in section 2 of the Act of June 14, 1966 (80 Stat. 200), as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707)."

2. At the end of section 6, insert the following new sentence: "The rate that the District shall pay the Secretary for such reserved power shall continue to reflect full recovery of Bonneville Power Administration transmission costs."

3. In Section 11(a), delete the sentence that read: "After transfer of title, any future Reclamation benefits received pursuant to chapter 1093 of the Reclamation Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto or amendatory thereof, other than as provided herein, shall be subject to approval by Congress."

4. At the end of Section 11 insert the following new subsection (c):

"(c) DEAUTHORIZATION.—Effective upon the transfer of title to the District under this section, that portion of the Oroville-Tonasket Unit Extension, Okanogan-Similkameen Division, Chief Joseph Dam Project, Washington referred to in Section 7(a) as the Project Irrigation Works is hereby deauthorized. After transfer of title, the District shall not be entitled to receive any further Reclamation benefits pursuant to the Reclamation Act of June 17, 1902, and Acts supplementary thereto or amendatory thereof."

5. Add in the Committee report language:

"It is the understanding of the Committee regarding this legislation that the amount of Oroville-Tonasket Project irrigation assistance that the Bonneville Power Administration will repay is not expected to exceed

$75,000,000, and that repayment is now scheduled to be made in the year 2042."•

By Mr. FEINGOLD:

S. 403. A bill to expand the definition of limited tax benefit for purposes of the Line-Item Veto Act; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

THE EXPANSION OF LINE-ITEM VETO ACT

• Mr. FEINGOLD. Mr. President, today I am introducing legislation to expand the Line-Item Veto Act to cover one of the largest and fastest growing areas of the Federal budget, tax expenditures. I am especially pleased to be joined in offering this legislation by my good friend, Congressman TOM BARRETT of Milwaukee who is spearheading this legislation in the other body. Both bills expand the Line-Item Veto Act which took effect this past January and will remain in force for the next 8 years.

Mr. President, both Congressman BARRETT and I supported the new Line-Item Veto Act that was signed into law last session. Though it isn't the whole answer to our deficit problem, I very much hope it will be part of the answer.

However, the new Line-Item Veto Act failed to address one of the largest and fastest growing areas of Federal spending—the spending done through the Tax Code, often called tax expenditures.

According to the Senate Budget Committee's most recent committee print on tax expenditures, prepared by the Congressional Research Service, we will spend nearly half a trillion dollars on tax expenditures during the current fiscal year. Citizens for Tax Justice estimates that over the next 7 years, we will spend $3.7 trillion on tax expenditures, and sometime in the next 2 to 3 years, the total amount spent on tax expenditures will actually surpass the total discretionary budget of the United States.

Mr. President, despite making up a huge and growing portion of the Federal budget, tax expenditures are beyond the reach of the new Presidential line-item veto authority. As currently structured, that authority only extends to so-called limited tax benefits, defined in part to be a tax expenditure that benefits 100 or fewer taxpayers. As long as the tax attorneys can find 101st taxpayers who benefit from the proposed tax expenditure, it is beyond the reach of the new Presidential authority.

Mr. President, it may not even be necessary for the tax attorneys to find that 101st taxpayer. If a tax expenditure gives equal treatment to all persons in the same industry or engaged in the same type of activity, it is exempt from the new Presidential authority no matter how narrow the special interest spending.

Further, if all persons owning the same type of property, or issuing the same type of investment, receive the same treatment from a tax expenditure, that tax expenditure is similarly outside the scope of the President's new authority.

Mr. President, there are still more exceptions that make it even harder for a President to trim unnecessary spending done through the tax code. For example, if any difference in the treatment of persons by a new tax expenditure is based solely on the size or form of the business or association involved, or, in the case of individuals, general demographic conditions, then the new spending cannot be touched by the President except as part of a veto of the entire piece of legislation which contains the new spending.

By contrast, we find none of these elaborate restrictions on the new line item veto authority for spending done through the appropriations process or through entitlements. The new Presidential authority is handcuffed only for spending done through the Tax Code.

Mr. President, this raises several problems.

First, and foremost, it shields an enormous portion of the Federal budget from this new tool to cut wasteful and unnecessary spending. If the authority established by the Line-Item Veto Act is to have meaning, it cannot be preempted from being used to scrutinize this much spending.

A second problem raised by the inability of the new Presidential authority to address new tax expenditures is that it creates an enormous loophole through which questionable spending can escape. We have already seen discussions of how special interest spending can be crafted to avoid the new Presidential authority. While the current Line-Item Veto Act power given the President formally covers discretionary spending and new entitlement authority, a special interest intent on enacting its pork barrel spending could readily do so by avoiding the discretionary or entitlement formats, and instead transform their pork into a tax expenditure. As we know from the elaborate limits placed on the President's ability to apply the new authority to spending through the Tax Code, most special interest pork that takes the form of a tax break is beyond the reach of the Line-Item Veto Act.

Mr. President, no matter how powerful this new authority is with regard to discretionary spending and entitlement authority, it is virtually useless against tax expenditures, and thus invites special interests to use this avenue to deliver pork.

A further problem with the lack of adequate Presidential review in this area is the very real potential for inequities in the implementation of the new Line-Item Veto Act authority. These inequities arise in part from the progressive structure of marginal tax rates—as income rises, higher tax rates are applied. In turn, this means that many tax expenditures are worth more to those in the higher income tax brackets than they are to families with lower incomes.

In some instances, tax expenditures provide no benefit at all to individuals with lower incomes.

This is not the case with entitlement and discretionary spending programs—both areas covered by the Line-Item Veto Act. The benefits of those programs often are targeted to those with lower income.

The net effect is that the scope of the current Line-Item Veto Act covers programs that often benefit those with low and moderate income, while it is powerless with regard to programs that often benefit individuals and corporations with higher incomes.

Mr. President, tax expenditures have another feature that makes it especially important that we extend the new Line-Item Veto Act to cover them, namely their status as a kind of super entitlement. Once enacted, a tax expenditure continues to spend money without any additional authorization or appropriation, and without any regular review. In fact, while even funding for entitlements like Medicare or Medicaid can be suspended in rare instances such as a Government shutdown, funding for a tax expenditure is never interrupted.

Tax expenditures enjoy a status that is far above any other kind of government spending, and as such, it should receive special scrutiny. Extending the Line-Item Veto Act to cover them will provide some of that needed review.

Mr. President, as I have noted, tax expenditures make up a huge portion of the budget. They will soon exceed the entire Federal discretionary budget. Citizens for Tax Justice reports that if all current tax expenditures were suddenly repealed, the deficit could be eliminated and income tax rates could be reduced across the board by about 25 percent.

Clearly, tax expenditures have an enormous impact on the deficit, and we need to pursue two tracks with regard to them. First, we must cut some of the nearly half a trillion dollars in existing spending done through the tax code. Any balanced plan to eliminate the deficit over the next few years must contain cuts to spending in this area.

And second, with so much of our budget already dedicated to this kind of spending, we must bring tax expenditures under the Line-Item Veto Act and give the President the authority to act on new spending in this area as he does in other areas.

Our legislation does just that by eliminating the highly restrictive language with respect to tax expenditures.

Mr. President, as with the recently enacted Line-Item Veto Act itself, this bill to extend that new authority is not the whole answer to our deficit problems, but it can be part of the answer, and I urge my colleagues to support this effort to put teeth into the new Presidential authority with respect to the tax expenditure portion of the Federal budget.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO CONGRESSIONAL BUDGET ACT.

Section 1026(9) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 691e(9)) (as added by the Line Item Veto Act) is amended to read as follows:

"(9) LIMITED TAX BENEFIT.—The term 'limited tax benefit' means any tax provision that has the practical effect of providing a benefit in the form of different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or class of taxpayers.".•

By Mr. BOND (for himself, Mr. CHAFEE, Mr. NICKLES, Mr. COCHRAN, Mr. GREGG and Mr. SMITH of New Hampshire):

S. 404. A bill to modify the budget process to provide for separate budget treatment of the dedicated tax revenues deposited in the Highway Trust Fund; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

HIGHWAY TRUST FUND INTEGRITY ACT OF 1997

Mr. BOND. Mr. President, I rise today to introduce a measure, along with my dear friend and colleague, the chairman of the Environment and Public Works Committee, Senator JOHN CHAFEE, entitled the Highway Trust Fund Integrity Act of 1997. Our cosponsors are Senators NICKLES, COCHRAN, and GREGG.

Mr. President, I hope all of us understand that transportation and highway funding is critical to our individual States and the entire Nation. Good highways link our communities, towns, and cities with markets. They link our constituents with their schools, hospitals, churches, and jobs.

An effective transportation system should move us into the 21st century. Back in 1956, the Federal Highway Trust Fund was established as a way to finance the Federal Aid Highway Program. This was to be a dedicated trust fund, supported by direct user fees and taxes. It was called a trust fund because once the money went in, we were supposed to be able to trust that that money would come back out for use on our roads, highways, and bridges.

However, the 1990 Budget Act eliminated the linkage between the revenues raised by the user taxes and the spending from the transportation fund. We know now that what we promised ourselves and our constituents, that the highway trust fund user taxes would be deposited and the trust fund would be used for highways, has not been observed. We see now an illogical process that allows highway trust fund dollars not to be spent in order to permit spending more in other categories. I believe that is wrong. My constituents are telling me this is wrong and they have challenged me to find a solution. I believe we have come up with that solution.

Let me explain, briefly, Mr. President, what the bill is: First, it is a budget bill, not a tax bill or an ISTEA highway authorization bill. This bill would ensure that the highway trust fund dollars are spent for the purposes for which they were intended and that it would be deficit neutral. The bill would reestablish the link between the highway trust fund taxes and highway spending by transferring the taxes and the spending to a new budget category—a revenue constrained fund—that is part of the unified budget. This new category would have its own budget rules to ensure that highway programs were fully funded and deficit neutral. This bill would restore the trust to the trust fund because highway spending would equal the highway trust fund taxes collected the prior year. It is consistent with achieving a balanced budget because it comes with its own built-in cap—the revenue received from the highway trust fund. It does not take the highway trust fund off-budget, but it also does not attempt to spend the balances that have accumulated or the interest on those balances. We do not attempt to resolve the arguments of the past. Instead we have focused on developing a workable process for the future.

I do not believe that the status quo is sustainable, primarily for two reasons.

First, our country has tremendous infrastructure needs. Take my State of Missouri alone. A recent report by the Road Information Program stated that Missouri has the seventh highest percentage of structurally deficient or functionally obsolete bridges in the country, and that more than half of its major roads are in poor or mediocre condition and in need of improvement. My State has the third highest percentage of urban freeway congestion in the Nation, and highway fatalities in Missouri have increased by 17 percent since 1993. These statistics will continue to grow as vehicle travel continues to grow and the infrastructure crumbles.

Second, I know that my constituents, and I would say the American public, will not continue to support a process that sentences transportation spending to compete with other discretionary programs despite its unique dedicated funding source.

Mr. President, I do not want to take much more time, but there is one more issue I would like to address. Senator CHAFEE and I have focused on the highway account of the highway trust fund. The bill we are introducing today does not address the mass transit account of the highway trust fund. It is not included due to some concern transit advocates have expressed—not in regards to the budget process being proposed, but over the level of funding that transit receives. I believe it is important that a workable solution be found for transit and I am committed to working with the Banking Committee, which has jurisdiction for the transit programs, and transit advocates in developing a proposal.

I want to thank my dear friend Senator CHAFEE for his leadership in the area of transportation. We will have ample opportunity to continue our work together as the reauthorization of ISTEA progresses. Senator CHAFEE has heard me 100 times stress the need for a formula change so I will not get into that one today. I do however want to thank him and his staff for their help on this legislation.

Mr. President, let me close by saying that this bill is the basis for a transportation funding policy for the future—a starting point for a fairer, more forward-looking transportation funding policy. I hope my colleagues will join us and cosponsor this important bill.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY OF HIGHWAY TRUST FUND INTEGRITY ACT OF 1997

GENERAL

Keeps the Highway Trust Fund on-budget, as part of the unified Federal budget.

Reestablishes the linkage between Highway Trust Fund taxes and spending that was lost when the Budget Enforcement Act of 1990 split the Federal budget process into two categories.

Consistent with achieving a balanced Federal budget by 2002.

Increases funding to meet our nation's substantial transportation needs.

Creates a new budget category that reflects the unique, revenue-constrained nature of the HTF. This new category, called a Revenue Constrained Fund (RCF) would have its own budget rules to ensure that transportation programs are fully-funded but deficit neutral.

REVENUE CONSTRAINED FUNDS (RCF)

The new RCF budget category would be a separate category, and would not be a subset of either the mandatory budget category or discretionary spending category.

Under the RCF proposal, the spending from Revenue Constrained Funds would be equal to the amount of tax receipts collected for the prior year. Spending would be limited to tax receipts in the prior year to ensure that Highway Trust Fund spending would never exceed actual receipts.

EXAMPLE OF PROBLEM UNDER CURRENT FEDERAL BUDGET PROCESS

One would expect that increased Highway Trust Fund taxes would make room in the budget for increased transportation spending. Unfortunately, this is not the case.

Under the current rules, gas tax increases do make room in the budget for additional spending, but not for increased transportation spending. Under the current rules, the only way to fund the highway trust fund program at the level of Highway Trust Fund tax receipts is by cutting other discretionary programs. We must reform the Federal budget process to correct this illogical outcome.

Mr. CHAFEE. Mr. President, I want to congratulate the Senator from Missouri for his prime work on this piece of legislation. The money that goes into the highway trust fund this year will go out for transportation purposes next year, and I believe that is the right way to do things. It has varied from some of the other proposals that have been put in which provide that the accumulated interest of the accumulated principle of the fund be spent. We don't do that. We provide that what came in last year through taxes will go out the following year for transportation purposes.

Mr. President, today I join as a cosponsor of the Highway Trust Fund Integrity Act of 1997. This legislation, sponsored by my colleague from Missouri, Senator BOND, and cosponsored by Senators NICKLES, COCHRAN and GREGG, reestablishes the link between highway trust fund taxes and transportation spending.

I believe that our proposal represents a reasonable and responsible solution to a problem that faces the Congress as it considers the reauthorization of the Intermodal Surface Transportation Efficiency Act.

I hope that this bill will serve as a starting point for further discussions with my colleagues, especially my colleagues from the Budget and Appropriations committees. I recognize that proposals that modify the budget process are by their nature, controversial, and upset the status quo. However, I think change is necessary and the status quo is no longer an acceptable outcome.

THE PROBLEM

As most of you are aware, the Budget Enforcement Act of 1990 split the Federal Budget process into two categories, one for receipts and mandatory spending and the other for discretionary spending. Highway trust fund taxes, like other revenues, are in the mandatory category, but almost all highway spending falls within the discretionary category. Each budget category has its own rules, procedures, and incentives. Because the highway trust fund is split between these two categories, different parts of the highway trust fund are subject to different budget rules, and the link between the highway trust fund taxes and transportation spending is severed.

Let me give an example of the problem the current situation causes. One would expect that increased highway trust fund taxes would make room in the budget for increased transportation spending. Unfortunately, this is not the case. Under the current rules, gas tax increases do make room in the budget for additional spending, but not for increased transportation spending. Under the current law, the only way to fund transportation programs at the level of highway trust fund tax receipts is by cutting other discretionary programs, such as law enforcement and education. We must reform the Federal budget process to correct this illogical outcome.

THE SOLUTION

Our proposal reestablishes the connection between highway trust fund taxes and transportation spending by putting the highway trust fund taxes and spending in the same budget category. "The Highway Trust Fund Integrity Act of 1997" transfers all of the highway trust fund receipts and outlays into a new budget category that reflects the unique, revenue-constrained nature of the highway trust fund. This new category, called the revenue constrained fund, would have its own budget rules to ensure that transportation programs are fully-funded but deficit neutral.

Under this proposal, spending from the highway trust fund would be equal to the highway trust fund tax receipts collected for the prior year. Spending would be limited to tax receipts in the prior year to guarantee that highway trust fund spending would never exceed actual receipts. If tax receipts into the highway trust fund are less than expected, transportation spending would be constrained, making the trust fund deficit-neutral.

This bill does not create a new entitlement program. Highway trust fund spending would be strictly limited by the amount of taxes deposited in the prior year thereby ensuring that the highway trust fund will be deficit neutral. Other entitlement programs do not have this guarantee.

TRUST FUND BALANCES

One of the questions that has been raised regarding our proposal is how it treats the balances that now exist in the highway trust fund. Our proposal does not specifically address the status of the balances that now exist in the highway trust fund. In developing this proposal, we have attempted to focus on establishing a workable process for the future that reestablishes the connection between the highway trust fund taxes and transportation spending. We think we can develop a broad consensus on a proposal to spend the taxes deposited into the highway trust fund going forward. Such a broad consensus is not possible regarding the balances that now exist in the highway trust fund. There is significant disagreement about the validity of spending those balances, and our bill does not attempt to resolve this disagreement.

CONGRESSIONAL JURISDICTION

Another question that has been raised about our proposal is how this proposal would change the jurisdiction of the various committees in the Congress over the highway trust fund. Our bill does not change the jurisdiction among Congressional committees. It is our intention that all of the committees involved in setting transportation policy would continue to provide policy input and oversight for those areas currently under their jurisdiction.

The tax committees would continue to play their role in setting tax rates of the highway trust fund; the authorizing committees would continue to play their role, including determining the program structure and distribution formulas for the formula grant programs, and the appropriations committees would continue to provide oversight and make decisions about the programs under their control.

Under our proposal, the total amount of highway trust fund spending would be determined by the American people who pay the taxes deposited into the trust fund. Neither the authorizing committees nor the appropriations committees would determine the total level of spending.

TRANSIT

In developing this legislation, we have focused on the programs and spending of the Highway Account of the highway trust tund. The highway account programs are under the jurisdiction of the Senate Committee on Environment and Public Works, the committee for which I serve as chairman. The bill we introduce today only addresses the highway account of the trust fund; it does not address the Mass Transit Account.

However, as part of the ISTEA reauthorization, I believe a similar proposal should be developed for the transit account of the highway tust Fund. Senator BOND and I plan to work with transit advocates and members of the Banking Committee, which has jurisdiction over transit programs, to craft such a proposal.

The Highway Trust Fund Integrity Act of 1997 is a forward looking bill. It is consistent with achieving a balanced Federal budget by 2002. It does not take the highway trust fund off-budget, but it does address concerns that the bond

between transportation taxes and transportation spending has been broken.

I urge my colleagues to cosponsor this important bill.

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. D'AMATO, Mr. ABRAHAM, Mr. BINGAMAN, Mrs. BOXER, Mr. DORGAN, Ms. MOSELEY-BRAUN, Mrs. MURRAY, Mr. DEWINE, Mr. CONRAD, Mr. ROCKEFELLER, and Mrs. FEINSTEIN):

S. 405. A bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit and to allow greater opportunity to elect the alternative incremental credit; to the Committee on Finance.

THE RESEARCH AND EXPERIMENTATION CREDIT PERMANENT EXTENSION ACT OF 1997

Mr. HATCH. Mr. President, today I am proud to introduce a bill to make the current tax credit for increasing research activities permanent with my friend and colleague MAX BAUCUS. We are also joined by Senators D'AMATO, ABRAHAM, BOXER, BINGAMAN, MOSELEY-BRAUN, DORGAN, MURRAY, DEWINE, CONRAD, ROCKEFELLER. Companion legislation will be introduced today by Representatives NANCY JOHNSON and ROBERT MATSUI in the House. The Small Business Job Protection Act of 1996 temporarily extended this tax credit until May 31, 1997, when it is set to expire.

As the United States is shifting from an industrial based economy to an information and technology based economy, conducting research for tomorrow's products and methods is increasing in importance. In 1981, the Reagan administration and the Congress recognized this need, and the credit for increasing research and experimentation [R&E] activities was first enacted. Unfortunately, the credit has been victim to repeated short term extensions that included a break in the availability of the credit.

Mr. President, this nation is the world's undisputed leader in technological innovation. American know-how has given our Nation benefits undreamed of a few years ago. Research and development by U.S. companies has led the way in delivering these benefits, which enhance U.S. competitiveness as well as the quality of life for everyone. And, as the pace of change in our world quickens, the role of research has taken on increased importance. Today, the credit is needed more than ever to keep up with our changing world.

The R&E credit has played a key role in placing the United States ahead of its competition in developing and marketing new products. Studies of the credit indicate that the marginal effect of $1 of the R&E credit stimulates approximately $1 of additional private research and development spending over the short-run, and as much as $2 of extra investment in research over the long-run.

Mr. President, the benefits of the R&E credit, though certainly very significant, have been limited by the fact that the credit has been temporary. In many fields, particularly pharmaceuticals and biotechnology, there are relatively long periods of development. The more uncertain the long-term future of the R&E credit is, the smaller the potential of the credit to stimulate increased research. This only makes sense, Mr. President. U.S. companies are managed by prudent business men and women. They evaluate their research and development investments by comparing the present value of the expected cash flow from the research over the life of the investment with the initial cash outlay. These estimates take into account the potential availability of tax credits. However, because of the uncertainty of a tax credit that has been allowed to continually expire, many decision makers do not count on the R&E credit as being available in the long-run. This, of course, means that fewer research projects will meet the threshold of viability and results in fewer dollars being spent on research in this country.

In the business community, the development of new products, technologies, drugs, and ideas can result in either success or failure. Investments carry a risk. If a project has a high risk of failure, the R&E tax credit will help ease the cost of taking the chance to find the cure for killer diseases such as cancer, to build the next microchip, or the next generation of heart monitoring equipment that can save lives. If the project becomes a success, resulting in a new drug that can cure a disease or a new breakthrough technology, then what happens? Additional investment is made, workers are hired, new jobs are created and many Americans benefit from the initial research and experimentation. In this way, all Americans can benefit from the R&E tax credit.

Mr. President, a small investment in R&E today produces dividends and rewards tomorrow. This tax credit is a credit for investment, for economic growth, and for creating new jobs. What if we don't act? As the Peat Marwick study confirms, the benefits of the R&E tax credit reach into the future. Failure to extend the credit beyond May 31, 1997, will weaken our Nation's ability to stay competitive in the future.

It is important to note that while U.S. investment in research and development has generally grown since 1970, our international competitors have not stood still. Other nations, such as Japan and Germany are constantly knocking at the door trying to build the better car, the faster computer, or a more effective drug. Uncertainty, about the future of the credit will make firms hesitant to make long-term commitments and investments in the critical long-term research projects that really are the source of the breakthrough drugs and the new technologies. In fact, United States non-defense R&D, as a percentage of gross domestic product [GDP], has been relatively flat since 1985, while Japan's and Germany's have grown.

Unlike a few years ago, it is now not always necessary for U.S. firms to perform their research activities within the boundaries of the United States. As more nations have joined the United States as high tech manufacturing centers, with educated work forces, multinational companies have found that moving manufacturing functions overseas is sometimes necessary to stay competitive. The same is often true with basic research activities. In fact, some of our major trading partners now provide generous tax incentives for research and development conducted in those nations. These incentives are more attractive than the R&E credit the United States provides, particularly when the temporary nature of our credit is considered. Therefore, Mr. President, we are at risk of having some of the R&D spending in the United States transferred overseas if we do not keep competitive.

President Clinton, when campaigning for the Presidency in 1992, recognized the importance of stimulating private R&D investment and called for a permanent R&E credit. The 1993 tax bill had a 3-year extension. Last year, we extended the credit for only 1 year because of revenue constraints in the small business bill. The President's fiscal year 1998 budget contains another 1-year extension. These proposals for extensions are well and good, Mr. President, but they do nothing to give stability to risky, long-term research and experimentation investments. The certainty of the availability of the tax credit is now almost as important as the credit itself. It might well make the difference between a decision to undertake an expensive multiyear research project and a decision to forego such research.

I hope this year we can put our support behind investment in research and make this credit permanent.

Mr. President, my home State of Utah is home to a large number of innovative companies who invest a high percentage of their revenue in research and development activities. For example, between Salt Lake City and Provo lies the world's biggest stretch of software and computer engineering firms. This area, which was named "Software Valley" by Business Week, is second only to California's Silicon Valley as a thriving high technology commercial area.

In addition, Utah is home to about 700 biotechnology and biomedical firms

that employ nearly 9,000 workers. These companies were conceived in research and development and will not survive, much less grow, without continuously conducting R&D activities.

In all, Mr. President, there are approximately 80,000 employees working in Utah's 1,400 plus and growing technology based companies. Research and development is the lifeblood of these firms, and hundreds of thousands more throughout the Nation that are like them. A permanent and effective tax incentive to increase research is essential to the long-term health of these businesses.

I am aware, Mr. President, that not every company that incurs R&D expenditures in the United States can take advantage of the R&E credit. As the credit matures and business cycles change, the current credit can be out of reach for some companies. Thus, as part of the latest extension of the credit Congress enacted an elective alternative credit to broaden the reach of this incentive. However, Congress should continue to examine ways to improve it and to make the credit more effective in delivering incentives to increase R&D activity.

In the meantime, however, it is important that this Congress send a strong signal that the current credit should not be allowed to expire. I urge my colleagues to show their support for the concept of a permanent R&E credit by cosponsoring this legislation and support the kind of research activities that will maintain American leadership in the technological developments that will lead us into the next century.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 405

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATIONS TO RESEARCH CREDIT.

(a) CREDIT MADE PERMANENT.—

(1) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 45C(b) of such Code is amended by striking subparagraph (D).

(b) OPPORTUNITY TO ELECT ALTERNATIVE INCREMENTAL CREDIT.—Subparagraph (B) of section 41(c)(4) of the Internal Revenue Code of 1986 (relating to election) is amended to read as follows:

"(B) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary."

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to amounts paid or incurred after May 31, 1997.

(2) ELECTION.—The amendment made by subsection (b) shall apply to taxable years beginning after June 30, 1996.

• Mr. BAUCUS. Mr. President, it is with great pleasure that I join with my colleague from Utah, Senator HATCH, and my other colleagues Senators ABRAHAM, BOXER, BINGAMAN, CONRAD, D'AMATO, DEWINE, DORGAN, MOSELEY-BRAUN, MURRAY, and ROCKEFELLER to introduce this bill, which is so critical to the ability of American businesses to effectively compete in the global marketplace. Companion legislation has been introduced in the House by Representatives NANCY JOHNSON and ROBERT MATSUI.

Our Nation is the world's undisputed leader in technological innovation, a position that would not be possible, absent U.S. companies' commitment to research and development. Investment in research is an investment in our Nation's economic future, and it is appropriate that both the public and private sector share the costs involved, as we share in the benefits. The credit provided through the Tax Code for research expenses provided a modest but crucial incentive for companies to conduct their research in the United States, thus creating high-skilled, high-paying jobs to U.S. workers.

The R&E credit has played a key role in placing the United States ahead of its competition in developing and marketing new products. Every dollar that the Federal Government spends on the R&E credit is matched by another dollar of spending on research over the short run by private companies, and $2 of spending over the long run. Our global competitors are well aware of the importance of providing incentives for research, and many provide more generous tax treatment for research and experimentation expenses than does the United States. As a result, while spending on nondefense R&D in the United States as a percentage of GDP has remained relatively flat since 1985, Japan's and Germany's has grown.

The benefits of the credit, though certainly significant, have been limited over the years by the fact that the credit has been temporary. In addition to the numerous times that the credit has been allowed to lapse, last year, for the first time, when Congress extended the credit it left a gap of an entire year during which the credit was not available. This unprecedented lapse sent a troubling signal to the U.S. companies and universities that have come to rely on the Government's longstanding commitment to the credit.

Much research and development takes years to mature. The more uncertain the long-term future of the credit is, the smaller its potential to stimulate increased research. If companies evaluating research projects cannot rely on the seamless continuation of the credit, they are less likely to invest on research in this country, less likely to put money into cutting-edge technological innovation that is critical to keeping us in the forefront of global competition.

Our country is locked in a fierce battle for high-paying technological jobs in the global economy. As more nations succeed in creating educationally advanced work forces and join the United States as high-technology manufacturing centers, they become more attractive to companies trying to penetrate foreign markets. Multinational companies sometimes find that moving both manufacturing and basic research activities overseas is necessary if they are to remain competitive. The uncertainty of the R&E credit factors into their economic calculations, and makes keeping these jobs in the United States more difficult.

Although the R&E credit is not exclusively used by high-technology firms, they are certainly key beneficiaries of the credit. In my own State of Montana, 12 of every 1,000 private sector workers were employed by high-technology firms in 1995, the most recent year for which statistics are available. Almost 400 establishments provided high-technology services, at an average wage of $34,500 per year. These jobs paid 77 percent more than the average private sector wage in Montana of $19,500 per year. Many of these jobs would never have been created without the assistance of the R&E credit. Making the credit permanent would most certainly provide the incentive needed to create many more in the future.

I urge my colleagues to support this legislation, and look forward to working with them and with the administration to make the research and experimentation tax credit permanent.•

By Mr. HATCH (for himself, Mr. BAUCUS, Mr. ALLARD, Mr. BOND, Mr. LIEBERMAN, and Mr. BURNS):

S. 406. A bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home; to the Committee on Finance.

THE HOME OFFICE DEDUCTION ACT OF 1997

Mr. HATCH. Mr. President, today I am proud to introduce the Home Office Deduction Act of 1997. I am joined today by my friends and colleagues, Senators BAUCUS, ALLARD, BOND, LIEBERMAN, and BURNS. This bill will clarify the definition of what is a "principal place of business" for purposes of section 280A of the Internal Revenue Code, which allows a deduction for an office in the home.

This bill is designed to reverse the 1993 Supreme Court decision in Commissioner versus Soliman. When this decision was handed down, it effectively closed the door to legitimate home office deductions for hundreds of thousands of taxpayers. Moreover, the

decision unfairly penalizes many small businesses simply because they operate from a home rather than from a store front, office building, or industrial park.

Mr. President, until the Soliman decision, small business owners and professionals who dedicate a space in their homes to use for business activities were generally allowed to deduct the expenses of the home office if they met the following conditions: First, the space in the home was used solely and exclusively on a regular basis as an office; and second, the deduction claimed was not greater than the income earned by the business. Through the Soliman case, the Supreme Court has narrowed significantly the availability of this deduction by requiring that the home office be the principal business location of the taxpayer. This requirement that the home office be the principal business location has proven to be impossible to meet for many taxpayers with legitimate home office expenses.

For example, under the Soliman decision, a self-employed plumber who generates business income by performing services in the homes of his customers would be denied a deduction for a home office. This is because, under the rules, his home office is not considered his principal place of business because the business income is generated in the homes of the customers and not in his home office. This is the case even though the home office is where he receives telephone messages, keeps his business records, plans his advertising, stores his tools and supplies, and fills out Federal tax forms. In fact, having a full-time employee in the office who keeps the books and sets up appointments would still not result in a home office deduction for the plumber.

This is preposterous, Mr. President, and we need to correct it. My bill would rectify this result by allowing the home office to qualify as the principal place of business if the essential administrative or management activities of the business are performed there.

The truly ironic effect of the Supreme Court's decision is that a taxpayer who rents office space outside of the home is allowed a full deduction, but one who tries to economize by working at home is penalized. This makes no sense to me.

The Home Office Deduction Act of 1997 is designed to restore the deduction for home office expenses to pre-Soliman law. Rather than requiring taxpayers to meet the new criteria set out by the Court, the bill allows a home office to meet the definition of a "principal place of business" if it is the location where the essential administrative or management activities are conducted on a regular and systematic basis by the taxpayer. To avoid possible abuses, the bill requires that the taxpayer have no other location for the performance of these essential administrative or management activities.

Mr. President, today's job market is rapidly changing. New technologies have been developed and continually improved that allow instant communication around the once expansive globe. There is even talk of virtual offices, which are equipped only with a telephone and a hookup for a portable computer. These mobile communications have revolutionized the definition of the traditional office. No longer is there a need to establish a business downtown. Employees are telecommuting by facsmile, modem, and telephone. Today, both a husband and a wife could work without leaving their home and the attention of their children. In this new age, redefining the deduction for home office expenses is vital. Our tax policy should not discriminate against home businesses simply because a taxpayer makes the choice, often based on economic or family considerations, to operate out of the home.

In most cases, start-up businesses are very short on cash. Yet, for many, ultimate success depends on the ability to hold out for just a few more months. In these situations, even a relatively small tax deduction for the expenses of the home office can make a critical difference. It is important to note that some of America's fastest growing and most dynamic companies originated in the spare bedroom or the garage of the founder. Our tax policies should support those who dare to take risks. Many of tomorrow's jobs will come from entrepreneurs who are struggling to survive in a home-based business.

Mr. President, the home office deduction is targeted at these small business men and women, entrepreneurs, and independent contractors who have no other place besides the home to perform the essential administrative or management activities of the business. The Soliman decision drastically reduced the effectiveness and fairness of this deduction and must be reversed.

This legislation can also have an important effect on rural areas, such as in my home State of Utah. Many small business owners and professionals in the rural areas of Utah must spend a great deal of time on the road, meeting clients, customers, or patients. It is likely that many of my rural constituents will be unable to meet the requirements for the home office deduction under the Soliman decision. Mr. President, we must help these taxpayers, not hurt them, in their efforts to contribute to the economy and support their families.

The Home Office Deduction Act of 1997 not only has strong bipartisan support in the Congress, but also has the support of the following organizations: The Alliance of Independent Store Owners and Professionals, the American Animal Hospital Association, the American Small Business Association, the American Society of Media Photographers, the American Society of Travel Agents, Americans for Financial Security, the Bureau of Wholesale Sales Representatives, Communicating for Agriculture, the Home Office & Business Opportunities Association of California, the Illinois Women's Economic Development Summit, the Manufacturers Agents National Association, the National Association for the Cottage Industry, the National Association of the Self-Employed, the National Association of Women Business Owners, the National Electrical Manufacturers Representatives Association, the National Federation of Independent Businesses, National Small Business United, the National Society of Public Accountants, the Promotional Products Association International, the Small Business Legislative Council.

I urge my colleagues in the Senate to join us as cosponsors of this important legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 406

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Home Office Deduction Act of 1997".

SEC. 2. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.

Section 280A(f) of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively; and

(2) by inserting after paragraph (1) the following:

"(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

"(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

"(B) the office is necessary because the taxpayer has no other location for the performance of the essential administrative or management activities of the business."

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after the December 31, 1996.

• Mr. BAUCUS. Mr. President, it is with great pleasure that I join with my colleague from Utah, Senator HATCH, to introduce this important bill today. The Home Office Deduction Act of 1997 will correct a problem that has unfairly hurt thousands of small businesses in this country.

In 1993, the Supreme Court, in its Commissioner versus Soliman decision, substantially narrowed the availability of the home office deduction. Until the

Soliman decision, small business owners and professionals who dedicated a space in their homes for business activities were generally allowed to deduct the expenses of the home office if the space was used solely and exclusively and on a regular basis as an office, and the deduction was not greater than the income earned by the business.

In the Soliman case, the Supreme Court limited the credit to only those persons who met with customers in the home office, or who conducted the primary business function in the home. This principal business location requirement has proven to be impossible to meet for many taxpayers with legitimate home office expenses.

The ironic effect of the Supreme Court's decision is that a taxpayer who operates from a store front, an office building, or an office park is allowed a full deduction, but one who chooses to work at home is penalized. This ruling denies the home office deduction to self-employed plumbers, home-care nurses, and other self-employed business people who try to economize by working from their homes but cannot meet with customers there due to the nature of their businesses.

Our bill is designed to restore the home office deduction to thousands of American men and women who work at home. Rather than requiring taxpayer to meet the new criteria set out by the Court, the bill allows a home office to meet the definition of a principal place of business if it is the sole location where essential administrative or management activities are conducted on a regular and systematic basis by the taxpayer. To avoid possible abuses, the bill requires that the taxpayer have no other location for the performance of these activities.

The job market in the United States is constantly changing. New technologies are helping to make the work-at-home option a practical reality, bringing all the benefits to society that home-based businesses can provide. Mothers and fathers, whether single or married, are more often choosing to work at home to be with their children. Having a parent at home who can help supervise children while earning a living can have a tremendous positive effect on the well-being of our families and of society.

Restoration of the home office deduction was one of the most important recommendations to come out of the June 1995 White House Conference on Small Business. Some of America's fastest growing and most dynamic companies originated in the spare bedroom or the garage of the founder. To foster continued economic growth and to encourage Americans to start their own business ventures, we need to pass legislation that will put home-based businesses on an equal footing with other enterprises.

I urge my colleagues and the administration to support this legislation, and look forward to seeing it enacted in the 105th Congress.●

By Mr. MCCAIN (for himself and Mr. BURNS):

S. 407. A bill to amend the Communications Act of 1934 to clarify the authority of the Federal Communications Commission to authorize foreign investment in United States broadcast and common carrier radio licenses; to the Committee on Commerce, Science, and Transportation.

THE INTERNATIONAL TELECOMMUNICATIONS INVESTMENT CLARIFICATION ACT

● Mr. MCCAIN. Mr. President. I introduce legislation designed to clarify the authority of the FCC to authorize foreign investment in United States broadcast and common carrier radio licenses. Joining me today, is Chairman BURNS of the Subcommittee on Communications.

Mr. President, American companies and consumers worldwide will benefit tremendously from the passage of this legislation. No one can deny that U.S. telecommunications services providers ability to compete in the global market is hampered by the restrictions that we place upon foreign companies seeking to do business here. The problem is quite simple: the more restrictive the foreign ownership rules are here in the U.S., the more oppressive are the regulations that are placed on United States companies in other countries. The solution is just as simple: the greater the willingness by the United States to permit foreign ownership of U.S. companies, the greater the success of the U.S. companies wishing to maximize their ownership opportunities overseas.

This bill accomplishes just that by amending section 310(b) to: First, remove the statutory limitation on foreign indirect investment in U.S. corporations holding common carrier or aeronautical radio licenses (but not broadcast licenses); second, allow foreign direct investment greater than 20 percent in U.S. corporations holding common carrier or aeronautical radio licenses, if the FCC finds it in the public interest; third, explicitly prohibit any corporation with more than 20 percent foreign government ownership from holding common carrier, aeronautical or broadcast licenses.

It is clear that lowering barriers to foreign ownership in this country will result in greater opportunities for U.S. service providers overseas. The ripple effect on the U.S. telecommunications industry as a whole would increase the benefits across the board from consumers to manufacturers to service providers. The only way for the United States to effectively lead the world in establishing an expansive global marketplace is to set the standard in this country by which U.S. companies want to be measured overseas. Liberalizing foreign ownership restrictions under 310(b) would send that message to our foreign partners loud and clear.

That is why I am introducing this bill, and I encourage my colleagues to join me and support the legislation.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 407

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "International Telecommunications Investment Clarification Act".

SEC. 2. FOREIGN OWNERSHIP.

Section 310(b) of the Communications Act of 1934 (47 U.S.C. 310(b)) is amended to read as follows:

"(b)(1) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by—

"(A) any alien or the representative of any alien;

"(B) any corporation organized under the laws of any foreign government; or

"(C) any corporation of which more than one-fifth of the capital stock is owned of record or voted by a foreign government or representative thereof.

"(2) No common carrier or aeronautical en route or aeronautical fixed ratio station license shall be granted to or held by any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

"(3) No broadcast radio station license shall be granted to or held by—

"(A) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by any corporation organized under the laws of a foreign country; or

"(B) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corportation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.".

SEC. 3. SUBMARINE CABLE AMENDMENT.

Section 2 of the Act of May 27, 1921, entitled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. 35), is amended by inserting before the period at the end thereof the following: ": *And provided further*, That the Federal Communications Commission shall not deny any license to land or operate such a cable solely on the grounds that such license will be issued to a corporation that is directly or indirectly owned by aliens, their representatives, or by any corporation organized under the laws of a foreign government".

SEC. 4. EFFECTIVE DATE; REGULATIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act are effective upon enactment.

(b) REGULATIONS.—Within 60 days after the date of enactment of this Act, the Federal Communications Commission shall take all actions necessary to implement this Act, including amending its rules and regulations, but the Commission shall not, after such effective date, take any action to enforce any rule, regulation, or policy that is inconsistent with the amendments made by this Act.

INTERNATIONAL TELECOMMUNICATIONS INVESTMENT BILL—SECTION-BY-SECTION SUMMARY

A Bill to amend the Communications Act of 1934 to clarify the authority of the FCC to authorize foreign investment in United States broadcast and common carrier radio licenses.

Section 1. Short Title. This Act may be cited as the "International Telecommunications Investment Clarification Act".

Section 2. Amendments to the Communications Act of 1934. Section 310(b) is amended to: (a) remove the statutory limitation on foreign indirect investment in U.S. corporations holding common carrier or aeronautical radio licenses (but not broadcast licenses); (b) allow foreign direct investment greater than 20% in U.S. corporations holding common carrier or aeronautical radio licenses, if the FCC finds it in the public interest; (c) explicitly prohibit any corporation with more than 20% foreign government ownership from holding common carrier, aeronautical or broadcast licenses.

Section 3. Amendment to the Submarine Cable Act. Clarify that the Submarine Cable Landing License may not be denied to an applicant solely on the basis of foreign investment or ownership.

Section 4. Effective Date. Effective upon enactment. Allow the FCC 90 days to amend its rules.•

By Mrs. BOXER (for herself and Mr. BINGAMAN):

S. 408. A bill to establish sources of funding for certain transportation infrastructure projects in the vicinity of the border between the United States and Mexico that are necessary to accommodate increased traffic resulting from the implementation of the North American Free Trade Agreement, including construction of new Federal border crossing facilities, and for other purposes; to the Committee on Energy and Natural Resources.

THE BORDER INFRASTRUCTURE, SAFETY AND CONGESTION RELIEF ACT OF 1997

• Mrs. BOXER. Mr. President, today, Senator BINGAMAN and I are introducing the Border Infrastructure, Safety and Congestion Relief Act of 1997, legislation to authorize assistance for States along the U.S.-Mexico border which must cope with the increased demands on roads and other public infrastructure that result from expanded international trade. Our bill is also being introduced in the House of Representatives by my good friend, Representative BOB FILNER.

Last week, in a hearing before the Environment and Public Works Committee on ISTEA, Transportation Secretary Rodney Slater noted that since the passage of NAFTA, "we have seen a tremendous growth in trade. To make the most of these opportunities, we are proposing a new program to help improve our border crossings and major trade corridors—programs that will facilitate our domestic and international trade * * *."

Secretary Slater is right: NAFTA has greatly increased trade across our borders. If we all work together to fix our border crossings, increased trade offers great opportunities for the entire nation. If we do not, then NAFTA will act as an unfunded mandate that forces California and other border States to support other States' trade routes.

The Administration is proposing a border crossing and trade corridors grant program to improve traffic efficiency at border crossings, to be funded at $45 million a year. All border States north and south would be eligible.

As I told Secretary Slater at last week's hearing, I believe that the proposal, while a good step forward, is too limited for our border needs. Forty-five million across 14 States is simply not enough to address these crucial infrastructure problems.

The Administration also wants to establish a new innovative financing program that would provide loans and credit assistance for large projects in the national interest—another good proposal, but one which, in my opinion, does not go far enough.

The Boxer-Bingaman-Filner bill provides a two-stage system for Federal assistance to fund the States' top-priority border infrastructure projects:

First, it authorizes appropriation of $125 million each year in 1998 through 2001—a total of $500 million—for a border infrastructure fund to provide Federal grants to border States and local governments in order to pay for new or upgraded connections to the regional and national road network. The bill also allows up to $10 million to be transferred from the fund to Federal law enforcement agencies to use for their own infrastructure improvements, such as border patrol roads and lighting.

Second, our bill would authorize appropriations of $100 million to provide a Federal guarantee for loans made by border State infrastructure banks [SIBS] or border authorities for high cost projects such as toll roads that bring in revenue to the States. Federal guarantees will support up to $1 billion in State loans.

For California, this could mean up to $50 million in Federal guarantees, leveraging up to $500 million in loans. California is one of 10 States designated last year by the Secretary of Transportation to participate in this innovative new method of financing transportation projects.

Third, the bill authorizes Federal loan guarantees for border railroads, which could modernize and complete the San Diego and Arizona Eastern railway. This section would provide $10 million a year for 4 years for a total of $40 million in Federal funds to help railroads obtain low-interest private loans they might otherwise not get.

Finally, our bill requires the Secretary of Transportation to submit an annual report to Congress on the volume of commercial traffic that is crossing the United States-Mexico border, and the level of international commercial vehicle safety violations. This report will help us gauge the effectiveness of the Federal response to trade demands on infrastructure in the border region.

Mr. President, since the entire Nation benefits from international trade, I believe the Federal Government has a responsibility to help pay for the improvements in roads and other infrastructure that make that trade possible. Our bill will ensure that we begin to meet that Federal responsibility.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 408

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Border Infrastructure Safety and Congestion Relief Act of 1997".

SEC. 2. FINDINGS.

Congress finds that—

(1) because of the North American Free Trade Agreement, all 4 States along the United States-Mexico border will require significant investments in highway infrastructure capacity and motor carrier safety enforcement at a time when border States face extreme difficulty in meeting current highway funding needs;

(2) the full benefits of increased international trade can be realized only if delays at the borders are significantly reduced; and

(3) Federal receipts from United States customs duties and fees are estimated to increase by an average of $800,000,000 annually in fiscal years 1998 through 2001, and these monies are an appropriate source of funding for programs designed to address the infrastructure needs of border States.

SEC. 3. DEFINITIONS.

In this Act:

(1) BORDER REGION.—The term "border region" means the region located within 60 miles of the United States border with Mexico.

(2) BORDER STATE.—The term "border State" means California, Arizona, New Mexico, and Texas.

(3) FUND.—The term "Fund" means the Border Transportation Infrastructure Fund established by section 4(g).

(4) NAFTA.—The term "NAFTA" means the North American Free Trade Agreement.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 4. DIRECT FEDERAL ASSISTANCE FOR BORDER CONSTRUCTION AND CONGESTION RELIEF.

(a) IN GENERAL.—Using amounts in the Fund, the Secretary shall make grants under this section to border States that submit an

application that demonstrates need, due to increased traffic resulting from the implementation of NAFTA, for assistance in carrying out transportation projects that are necessary to relieve traffic congestion or improve enforcement of motor carrier safety laws.

(b) GRANTS FOR CONNECTORS TO FEDERAL BORDER CROSSING FACILITIES.—The Secretary shall make grants to border States for the purposes of connecting, through construction or reconstruction, the National Highway System designated under section 103(b) of title 23, United States Code, with Federal border crossing facilities located in the United States in the border region.

(c) GRANTS FOR WEIGH-IN-MOTION DEVICES IN MEXICO.—The Secretary shall make grants to assist border States in the purchase, installation, and maintenance of weigh-in-motion devices and associated electronic equipment that are to be located in Mexico if real time data from the devices is provided to the nearest United States port of entry and to State commercial vehicle enforcement facilities that serve the port of entry.

(d) GRANTS FOR COMMERCIAL VEHICLE ENFORCEMENT FACILITIES.—The Secretary shall make grants to border States to construct, operate, and maintain commercial vehicle enforcement facilities located in the border region.

(e) LIMITATIONS ON EXPENDITURES OF FUNDS.—

(1) COST SHARING.—A grant under this section shall be used to pay the Federal share of the cost of a project. The Federal share shall be 80 percent.

(2) ALLOCATION AMONG STATES.—

(A) IN GENERAL.—For each of fiscal years 1998 through 2001, the Secretary shall allocate amounts remaining in the Fund, after any transfers under section 5, among border States in accordance with an equitable formula established by the Secretary in accordance with subparagraphs (B) and (C).

(B) CONSIDERATIONS.—Subject to subparagraph (C), in establishing the formula, the Secretary shall consider—

(i) the annual volume of international commercial vehicle traffic at the ports of entry of each border State as compared to the annual volume of international commercial vehicle traffic at the ports of entry of all border States, based on the data provided in the most recent report submitted under section 8;

(ii) the percentage by which international commercial vehicle traffic in each border State has grown during the period beginning on the date of enactment of the North American Free Trade Agreement Implementation Act (Public Law 103–182) as compared to that percentage for each other border State; and

(iii) the extent of border transportation improvements carried out by each border State during the period beginning on the date of enactment of the North American Free Trade Agreement Implementation Act (Public Law 103–182).

(C) MINIMUM ALLOCATION.—Each border State shall receive not less than 5 percent of the amounts made available to carry out this section during the period of authorization under subsection (i).

(f) ELIGIBILITY FOR REIMBURSEMENT FOR PREVIOUSLY COMMENCED PROJECTS.—The Secretary shall make a grant under this section to a border State that reimburses the border State for a project for which construction commenced after January 1, 1994, if the project is otherwise eligible for assistance under this section.

(g) BORDER TRANSPORTATION INFRASTRUCTURE FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States the Border Transportation Infrastructure Fund to be used in carrying out this section, consisting of such amounts as are appropriated to the Fund under subsection (i).

(2) EXPENDITURES FROM FUND.—

(A) IN GENERAL.—Subject to subparagraph (B), upon request by the Secretary, the Secretary of the Treasury shall transfer from the Fund to the Secretary such amounts as the Secretary determines are necessary to make grants under this section and transfers under section 5.

(B) ADMINISTRATIVE EXPENSES.—An amount not exceeding 1 percent of the amounts in the Fund shall be available for each fiscal year to pay the administrative expenses necessary to carry out this section.

(h) APPLICABILITY OF TITLE 23.—Title 23, United States Code, shall apply to grants made under this section.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Fund to carry out this section and section 5 $125,000,000 for each of fiscal years 1998 through 2001. The appropriated amounts shall remain available for obligation until the end of the third fiscal year following the fiscal year for which the amounts are appropriated.

SEC. 5. CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE FOR LAW ENFORCEMENT PURPOSES.

At the request of the Attorney General, the Secretary may transfer, during the period consisting of fiscal years 1998 through 2001, up to $10,000,000 of the amounts from the Fund to the Attorney General for the construction of transportation infrastructure necessary for law enforcement in border States.

SEC. 6. BORDER INFRASTRUCTURE INNOVATIVE FINANCING.

(a) PURPOSES.—The purposes of this section are—

(1) to encourage the establishment and operation of State infrastructure banks in accordance with section 350 of the National Highway System Designation Act of 1995 (109 Stat. 618; 23 U.S.C. 101 note); and

(2) to advance transportation infrastructure projects supporting international trade and commerce.

(b) FEDERAL LINE OF CREDIT.—Section 350 of the National Highway System Designation Act of 1995 (109 Stat. 618; 23 U.S.C. 101 note) is amended—

(1) by redesignating subsection (l) as subsection (m); and

(2) by inserting after subsection (k) the following:

"(l) FEDERAL LINE OF CREDIT.—

"(1) DEFINITIONS.—In this subsection, the terms 'border region' and 'border State' have the meanings given the terms in section 3 of the Border Infrastructure Safety and Congestion Relief Act of 1997.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the general fund of the Treasury $100,000,000 to be used by the Secretary to make lines of credit available to—

"(A) border States that have established infrastructure banks under this section; and

"(B) the State of New Mexico which has established a border authority that has bonding capacity.

"(3) AMOUNT.—The line of credit available to each participating border State shall be equal to the product of—

"(A) the amount appropriated under paragraph (2); and

"(B) the quotient obtained by dividing—

"(i) the contributions of the State to the Highway Trust Fund during the latest fiscal year for which data are available; by

"(ii) the total contributions of all participating border States to the Highway Trust Fund during that fiscal year.

"(4) USE OF LINE OF CREDIT.—The line of credit under this subsection shall be available to provide Federal support in accordance with this subsection to—

"(A) a State infrastructure bank engaged in providing credit enhancement to creditworthy eligible public and private multimodal projects that support international trade and commerce in the border region; and

"(B) the New Mexico Border Authority;

(each referred to in this subsection as a 'border infrastructure bank').

"(5) LIMITATIONS.—

"(A) IN GENERAL.—A line of credit under this subsection may be drawn on only—

"(i) with respect to a completed project described in paragraph (4) that is receiving credit enhancement through a border infrastructure bank;

"(ii) when the cash balance available in the border infrastructure bank is insufficient to pay a claim for payment relating to the project; and

"(iii) when all subsequent revenues of the project have been pledged to the border infrastructure bank.

"(B) THIRD PARTY CREDITOR RIGHTS.—No third party creditor of a public or private entity carrying out a project eligible for assistance from a border infrastructure bank shall have any right against the Federal Government with respect to a line of credit under this subsection, including any guarantee that the proceeds of a line of credit will be available for the payment of any particular cost of the public or private entity that may be financed under this subsection.

"(6) INTEREST RATE AND REPAYMENT PERIOD.—Any draw on a line of credit under this subsection shall—

"(A) accrue, beginning on the date the draw is made, interest at a rate equal to the current (as of the date the draw is made) market yield on outstanding, marketable obligations of the United States with maturities of 30 years; and

"(B) shall be repaid within a period of not more than 30 years.

"(7) RELATIONSHIP TO STATE APPORTIONMENT.—Funds made available to States to carry out this subsection shall be in addition to funds apportioned to States under section 104 of title 23, United States Code.".

SEC. 7. RAILROAD REHABILITATION AND IMPROVEMENT PROGRAM.

(a) PURPOSE.—The purpose of this section is to provide assistance for freight rail projects in border States that benefit international trade and relieve highways of increased traffic resulting from NAFTA.

(b) ISSUANCE OF OBLIGATIONS.—The Secretary shall issue to the Secretary of the Treasury notes or other obligations pursuant to section 512 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 832), in such amounts, and at such times, as may be necessary to—

(1) pay any amounts required pursuant to the guarantee of the principal amount of an obligation under section 511 of that Act (45 U.S.C. 831) for any eligible freight rail project described in subsection (c) during the period that the guaranteed obligation is outstanding; and

(2) during the period referred to in paragraph (1), meet the applicable requirements of this section and sections 511 and 513 of that Act (45 U.S.C. 832 and 833).

(c) ELIGIBILITY.—Assistance provided under this section shall be limited to those freight rail projects located in the United States that provide intermodal connections that enhance cross-border traffic in the border region.

(d) LIMITATION.—Notwithstanding any other provision of law, the aggregate unpaid principal amounts of obligations that may be guaranteed by the Secretary under this section may not exceed $100,000,000 during any of fiscal years 1998 through 2001.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to make loan guarantees under this section $10,000,000 for each of fiscal years 1998 through 2001.

SEC. 8. REPORT.

(a) IN GENERAL.—The Secretary shall annually submit to Congress and the Governor of each border State a report concerning—

(1) the volume and nature of international commercial vehicle traffic crossing the border between the United States and Mexico; and

(2)(A) the number of international commercial vehicle inspections conducted by each border State at each United States port of entry; and

(B) the rate of out-of-service violations of international commercial vehicles found through the inspections.

(b) INFORMATION PROVIDED BY UNITED STATES CUSTOMS SERVICE.—For the purpose of preparing each report under subsection (a)(1), the Commissioner of Customs shall provide to the Secretary such information described in subsection (a)(1) as the Commissioner has available.

SEC. 9. SENSE OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS.

It is the sense of the Committee on Environment and Public Works of the Senate that the programs authorized under this Act should be fully financed in a budget neutral manner by offsetting receipts derived from customs duties and fees.●

ADDITIONAL COSPONSORS

S. 66

At the request of Mr. HATCH, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 66, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

S. 194

At the request of Mr. CHAFEE, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 194, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations and for other purposes.

S. 197

At the request of Mr. ROTH, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 197, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 221

At the request of Mr. GREGG, the name of the Senator from Wyoming [Mr. ENZI] was added as a cosponsor of S. 221, a bill to amend the Social Security Act to require the Commissioner of Social Security to submit specific legislative recommendations to ensure the solvency of the social security trust funds.

S. 228

At the request of Mr. MCCAIN, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 228, a bill to amend title 31, United States Code, to provide for continuing appropriations in the absence of regular appropriations.

S. 263

At the request of Mr. MCCONNELL, the name of the Senator from Illinois [Mr. DURBIN] was added as a cosponsor of S. 263, a bill to prohibit the import, export, sale, purchase, possession, transportation, acquisition, and receipt of bear viscera or products that contain or claim to contain bear viscera, and for other purposes.

S. 293

At the request of Mr. HATCH, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 293, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for clinical testing expenses for certain drugs for rare diseases or conditions.

S. 354

At the request of Mr. KENNEDY, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 354, a bill to amend the Federal Property and Administrative Services Act of 1949 to prohibit executive agencies from awarding contracts that contain a provision allowing for the acquisition by the contractor, at Government expense, of certain equipment or facilities to carry out the contract if the principal purpose of such provision is to increase competition by establishing an alternative source of supply for property or services.

SENATE RESOLUTION 60

At the request of Ms. COLLINS, the names of the Senator from Idaho [Mr. CRAIG], the Senator from New Mexico [Mr. DOMENICI], the Senator from Arkansas [Mr. HUTCHINSON], the Senator from Montana [Mr. BURNS], the Senator from Florida [Mr. GRAHAM], the Senator from Ohio [Mr. DEWINE], the Senator from North Carolina [Mr. HELMS], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Virginia [Mr. WARNER], and the Senator from Nebraska [Mr. HAGEL] were added as cosponsors of Senate Resolution 60, a resolution to commend students who have participated in the William Randolph Hearst Foundation Senate Youth Program between 1962 and 1997.

AMENDMENTS SUBMITTED

U.S. TRADE REPRESENTATIVE JOINT RESOLUTION

HOLLINGS (AND HELMS) AMENDMENT NO. 19

Mr. HOLLINGS (for himself and Mr. HELMS) proposed an amendment to the joint resolution (S.J. Res. 5) waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative; as follows:

On page 2, after line 8 insert the following:

SEC. 2. CONGRESSIONAL APPROVAL OF CERTAIN TRADE AGREEMENTS REQUIRED.

No international trade agreement which would in effect amend or repeal statutory law of the United States law may be implemented by or in the United States until the agreement is approved by the Congress.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. WARNER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR–301, Russell Senate Office Building, on Thursday, March 6, 1997 at 2:15 p.m. to hold a hearing and markup on the Committee on Governmental Affairs request for additional funding.

For further information concerning this hearing, please contact Ed Edens of the committee staff on 224–6678.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Tuesday, March 11, 1997 at 9 a.m. in SR–328A. The purpose of the hearing will be to receive testimony regarding the agriculture research systems structure, funding mechanisms, coordination and priority setting, and accountability.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Thursday, March 13, 1997 at 9 a.m. in SR–328A. The purpose of the hearing will be to receive testimony regarding the agriculture research systems structure, funding mechanisms, coordination and priority setting, and accountability.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Tuesday, March 18, 1997 at 9 a.m. in SR–328A. The purpose of the hearing will be to receive testimony regarding the agriculture research systems structure, funding mechanisms,

coordination and priority setting, and accountability.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on Thursday, March 20, 1997 at 9 a.m. in SR–328A. The purpose of the hearing will be to receive testimony regarding the agriculture research systems structure, funding mechanisms, coordination and priority setting, and accountability.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Wednesday, March 5, 1997, at 9 a.m. in SR–328A to review the U.S. Department of Agriculture Business Plan and Reorganization Management.

The PRESIDING OFFICER. Without objection, it is so so ordered.

COMMITTEE ON FINANCE

Mr. ROTH. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Wednesday, March 5, 1997, beginning at 10 a.m. in room 215 Dirksen.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Wednesday, March 5, at 10 a.m. for a hearing on high-risk issues.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet in executive session during the session of the Senate on Wednesday, March 5, 1997, at 9 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, March 5, 1997 beginning at 9:30 a.m. until business is completed, to hold a oversight hearing to review the budget and operations of the Secretary of the Senate, Sergeant at Arms, Architect of the Capitol, and the National Gallery of Art.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AIRLAND FORCES

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces be authorized to meet on Tuesday, March 5, 1997, at 10 a.m. in open session, to receive testimony on the Defense authorization request for fiscal year 1998 and the future years Defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. ROTH. Mr. President, I ask unanimous consent that the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 5, 1997, at 10 a.m. on the Gore Commission/Aviation Safety.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PERSONNEL

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Personnel of the Committee on Armed Services be authorized to meet on Wednesday, March 5, 1997, at 2 p.m. in open session, to receive testimony on recruiting and retention policies within the Department of Defense and the military services in review of the Defense authorization request for fiscal year 1998 and the future years Defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON STRATEGIC FORCES

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces of the Committee on Armed Services be authorized to meet at 2 p.m. on Wednesday, March 5, 1997 to receive testimony on Defense programs to combat the proliferation of weapons of mass destruction and the Department of Defense budget request for fiscal year 1998 and the future years Defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL AND RISK ASSESSMENT

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Waste Control and Risk Assessment be granted permission to conduct a hearing Wednesday, March 5, at 9:30 a.m., hearing room SD–406, on the reauthorization of Superfund, including S. 8, the Superfund Cleanup Acceleration Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

WILSON K. SMITH

• Mr. BIDEN. Mr. President, while on a field trip to a Civil War site in the 1950's, a young African-American boy from Delaware asked his teacher why there was no mention of black soldiers. He learned a cold, hard lesson that day—that even though black soldiers fought and died for their country, they were not honored because of the color of their skin.

That field trip ignited what would become a 40-year crusade by a Delawarean named Wilson K. Smith. Mr. Smith is a retired Army Sergeant, who was decorated with a Bronze Star and Silver Star during the Vietnam war as a member of the 101st Airborne Division, First Special Forces. In 1957, Sgt. Smith began collecting war stories from black veterans. By 1979, he had tracked down all the African-American Congressional Medal of Honor recipients. In 1989, he began seeking financial pledges and support to build an African-American Medal of Honor monument.

I am proud to have worked closely with Mr. Smith over the last 5 years to see the realization of his dream.

Last month, the names of the 85 African-American Medal of Honor recipients were officially recognized in a permanent exhibit at the Pentagon. This exhibit replicates a monument honoring black Medal of Honor recipients now on permanent display at Morgan State University in Baltimore, MD. Mr. Smith was the driving force behind the design and fundraising for this monument.

This monument will help keep the legacy of the African-American Congressional Medal of Honor recipients alive for generations to come. Never again will young African-American school boys and girls have to wonder why black veterans are not honored for their service and sacrifice to the United States of America.

The Medal of Honor is the highest award for bravery in military service to our country, but few are aware of the names, faces and stories of heroism of the Medal of Honor recipients. These are truly inspiring Americans, who continue to serve this country by their examples of courage, patriotism, and selfless dedication above and beyond the call of duty. From the Civil War to the World Wars to Vietnam to the Persian Gulf war, they have been the outstanding defenders of liberty, the highest hope of humanity in struggle, and the truest representatives of human strength. A memorial to bring that inspiration to African-Americans and to all of us, is a most worthy endeavor.

It truly has been my honor and pleasure to have strongly supported Wilson Smith's crusade, along with many other national and State leaders, including former Chairman of the Joint Chiefs of Staff, General Colin Powell. Wilson Smith is an outstanding man, Delawarean, U.S. veteran and historian. We all will forever owe him a double debt of gratitude for his service to our country.•

TRIBUTE TO LOUISIANA AFL–CIO PRESIDENT VICTOR BUSSIE

• Mr. BREAUX. Mr. President, next week working men and women from all

over Louisiana will pause to honor a great and visionary leader and a remarkable man who has led Louisiana's AFL–CIO for the past 41 years. On March 10, my good friend Victor Bussie will retire as president of my State's AFL–CIO—marking the end of a truly historic public career during which time he was widely regarded as one of the most powerful and respected men in Louisiana public life.

Those of us who have known and admired Vic Bussie for many years understand that his power was not so much derived from the position he held, but from the force of his personality and the deep conviction and personal integrity that he brought to every debate or endeavor. Simply put, Vic Bussie will always be remembered as one of the most honorable and decent men who ever served in public life.

Perhaps the greatest testimony to Vic Bussie's extraordinary career is the many tributes paid to him by those who often found themselves on opposing sides in legislative and political battles. Almost without exception, those who fought with Vic Bussie over the issues never had anything but the highest regard for his integrity and his tireless dedication to the cause of Louisiana's working men and women. Always aided by his wife, Fran, Vic Bussie was not only an effective and articulate spokesman for organized labor; he also brought his influence and moral persuasion to bear on a wide variety of issues, including civil rights, education, health care, government reform and economic development. In every case, I believe that the people of Louisiana are better off today because Vic Bussie took an interest in those issues and dedicated himself to making life better for all of our citizens, not just those in the labor movement.

Perhaps one of the greatest testimonies to Vic Bussie's influence and power were the many national political leaders who relied on him during his 41 years at the helm of Louisiana's AFL–CIO. From John F. Kennedy to Lyndon Johnson to Jimmy Carter to Bill Clinton, presidents of the United States have often sought Vic Bussie's counsel and have relied on him to build public support for their campaigns and their legislative initiatives. In the mid-1960s, when President Lyndon Johnson was attempting to persuade my predecessor, Senator Russell Long, to support his proposal to create the national Medicare system, he called on Vic Bussie. As the story goes, Vic was on the next plane to Washington and it was not long afterwards that Senator Long announced his support for Medicare. As Russell and I have learned so many times, it is awfully hard to say no to Vic Bussie.

Mr. President, the late Adlai Stevenson once remarked that "every age needs men who will redeem the time by living with a vision of things that are to be." I suspect that Vic counted Adlai Stevenson as one of his friends. In fact, I would not be surprised to learn that Stevenson had Vic Bussie in mind when he uttered those words. As leader of Louisiana's labor movement for the past 41 years, Vic Bussie has certainly redeemed his time well. All working men and women owe him a tremendous debt of gratitude and my wife, Lois, and I are very proud to be part of the chorus of well-deserved praise that is coming his way during the days leading up to his retirement.

I know I speak for many others when I say that Victor Bussie will always be gratefully remembered for the outstanding service he has rendered to his State and his Nation.•

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

• Mr. ROCKEFELLER. Mr. President, I oppose amending the U.S. Constitution with a rigid requirement that every year the Federal Government must have a zero budget deficit. I don't think it is appropriate to use our Nation's most revered governing document to lock in a budget and economic policy that cannot respond to changing needs and circumstances. And I do not believe such a requirement could be enforced without forcing a constitutional crisis.

In my view, Congress does not need an amendment to the U.S. Constitution to perform its responsibility to enact responsible, balanced Federal budgets. The President and the Congress have all the tools they need to reduce the deficit, to respond and adapt to the country's changing needs, and to keep us militarily and economically strong. It is not a constitutional amendment that makes these choices, but strong leadership and judgment. We must make the choices through realistic cuts in spending, reasonable and fair tax policies, and the setting of obtainable goals that show the specifics—every spending cut and every tax.

Congress can and should act to reduce the deficit. A Democratic Congress did just that in 1993, and the deficit has been cut by more than 60 percent. Including an artificial, unworkable mandate in the U.S. Constitution is not the appropriate path to fiscal responsibility.

I offered and withdrew an amendment which would have protected Medicare from the autopilot of the balanced budget amendment. I offered the Medicare amendment with the intention of engaging in a debate that would expose the balanced budget amendment for the budgetary strait jacket that it is. I offered the amendment with the firm belief that a debate about the effects of a balanced budget amendment on Medicare may help some of my colleagues think through what their actions will mean. People don't want Social Security to be used to balance the budget—and, I believe Medicare is just as important to our constituents as Social Security. Medicare provides West Virginia seniors with health care security—Social Security with a measure of retirement security. My amendment says that the pursuit of a balanced budget should not rob seniors of the health care security they need and deserve.

The current constitutional balanced budget amendment, if passed, would force deep and devastating cuts on the Medicare Program. Such cuts would increase the already too high out of pocket costs senior citizens are forced to pay for basic health care. The pending constitutional amendment is sure to drive up the percentage of a senior's total income they must spend on health care services. Currently, seniors' out of pocket costs are, on average, about 21 percent of their total income. This balanced budget amendment is likely to force seniors to spend 25, 30, 35, or even 50 percent of their total resources on the health care services they need. This increased burden on seniors would force many seniors into poverty and make a greater proportion of them dependent on Medicaid services, in essence, shifting even more health care costs to the states.

I want my colleagues to recognize the real world consequences of their vote for an automatic, constitutional balanced budget—the imposition of devastating cuts in the Medicare Program. Every Senator who I have heard speak publicly about Medicare has said they want to protect, preserve, and strengthen the program. A balanced budget amendment to the Constitution will do the opposite by devastating Medicare—simple math tells us this is true. If my colleagues mean it when they say they want to protect Medicare, they will oppose this constitutional amendment. I urge my colleagues to vote against Medicare being used as a piggy bank to be raided at the end of the year, when the budget isn't in balance, for whatever unforseen economic reason.

I think my colleagues should consider the admonition of the Secretary of the Treasury about the consequences of a Constitutional balanced budget amendment for Medicare beneficiaries. I asked the Secretary what he thinks would happen to Medicare beneficiaries under a balanced budget amendment when he appeared before the Finance Committee two weeks ago. Here is our exchange about the effects of the balanced budget amendment:

Senator ROCKFELLER. Now we have this thing called a balanced budget amendment, which, according to one of the papers this morning, may lose steam in both chambers, and I hope that is the case.

But, in the event that it is not, it will be, I think, very problematic for Medicare if we go into a situation where, let us say—Senator MOYNIHAN has heard me talk about this

many times—back in the early 1980's in West Virginia we had unemployment that ran up to 21 percent, and devastation to the extent that we were laying off tens of thousands of workers. And this was not common just to West Virginia, it was true in the industrial heartland, as we were making a major economic shift that was painful.

Now, if that were to happen again, and I see no reason why it will not; Japan is now going through exactly that same kind of difficulty, one that we would not have guessed that they would have gone through 10 years after we did, but they are. They are very down about it. They are going to be fine in the long-term.

But if we were to run into that situation again in this country and we had a balanced budget amendment and we had to balance by the end of the year and we had to do our part here in Finance, would we not run into what we used to call sequestration?

Secretary RUBIN. I think that you could easily run into a situation, Senator. I think this is only one of the many problems that a balanced budget amendment creates, and that is, I do think it creates an additional threat to Medicare, if that is what you are saying. If you get to the end of the year and there is a very large, unexpected shortfall, which happens from time to time, then I think the President could be in a position where he would be forced to simply cease sending out all checks.

Well, if you cease sending out all checks you will cease sending out Social Security checks, you will cease sending out Medicare checks, and you will cease sending out all other kinds of checks, I think, instead of being able to deal with it in some sort of a reasonable and sensible fashion.

The Medicare trust fund should not be used as a cash cow to balance the budget in an effort to meet the restrictive requirements of a constitutional amendment. I believe it is clear that one consequence of Senate Joint Resolution 1 would be the Medicare program, which provides health services to 38 million senior citizens, will be cut in excess of what is required to protect seniors and beyond the dictates of good health policy.

I am committed to charting a positive course for our Nation in the 21st century, and I believe that we are moving in the right direction. Some of us have worked very hard in the recent years to do the job of digging out from the exploding deficits of the 1980's, by reducing the deficit, and changing the priorities of the Federal budget in order to cut waste and increase investment in America's future. I have cast many votes in recent years for actual cuts, for detailed changes in policy, and for specific budget plans. These are the kinds of real votes that have cut the deficit.

By working out a balance between what must be done to invest in our people, and using their hard-earned tax dollars more wisely, we have a course that is far less reckless and dangerous than strapping this amendment onto the U.S. Constitution. I truly believe we can achieve the real goal of a balanced budget amendment—fiscal responsibility—if we are brave enough to tackle the real challenges that confront us. For the sake of real fiscal responsibility and the sake of West Virginia's future, I cast my vote against the constitutional amendment to balance the budget.●

MR. COKER ADDS TO THE FIGHT AGAINST DRUGS

Mr. BIDEN. Mr. President, last fall, I had the opportunity to participate in a ribbon cutting ceremony commemorating renovations to the Queen Manor low-income senior citizen complex in Dover, DE. One of the highlights of the ceremony was a poem written and read by Mr. James B. Coker that reminds us that drug abuse is not the answer.

Mr. President, I ask that the text of the poem be printed in the RECORD.

The poem follows:

The high I need doesn't come in a bottle
Or in an auto's throttle
Just give me some hugs
Not someone's drugs

Mr. BIDEN. Last week, President Clinton announced a new addition to our strategy in the fight against drug abuse by young people in America. I applaud the President's effort to focus on teen drug abuse, and believe that it is a good response to a disturbing trend that we cannot ignore. We must harness a moral condemnation of drug use by all segments of our population.

I commend Mr. Coker for making a difference, and am grateful for his contribution in the fight against drug abuse.●

DIVERSIFIED INTERGENERATIONAL CARE, INC.

● Mr. LIEBERMAN. Mr. President, I rise today to honor Diversified Intergenerational Care, Inc., in recognition of the grand opening of their facility at the West Haven Medical Center on March 21, 1997. This facility, which is the first of its kind in the Nation, will provide child care services and care for the mentally ill and elderly.

The sole principals of the company, Scott L. Shafer and Bernard L. Ginsberg, were able to make this facility a reality through a lease they were awarded by the Department of Veterans Affairs. They were selected for the Department's enhanced-use lease through a highly competitive process involving companies nationwide.

Diversified Intergenerational Care, Inc. considers it an honor to work with the Department of Veterans Affairs. They intend to continue their partnership by developing other intergenerational facilities. Their goal is to satisfy the unmet need for care for children, the elderly, and the mentally ill at VA medical centers across the country.

I congratulate Diversified Intergenerational Care, Inc. and the Department of Veterans Affairs for creating this very worthwhile facility, and thank them for working to make these vital services available to those in need.●

ANOTHER MILESTONE FOR THE NPT

● Mr. GLENN. Mr. President, I rise to remind my fellow colleagues that today marks the 27th anniversary of the entering into force of the Treaty on the Non-Proliferation of Nuclear Weapons, or NPT. All too often, the contributions to U.S. security made by multilateral arrangements like the NPT go unrecognized.

I will speak today of a treaty that—with the accession by Oman last January—now has 185 members. That is more than any international security treaty in history. Though it is true that the NPT has not eradicated the global threat of nuclear weapons proliferation—and that it faces some daunting challenges ahead —the treaty has undoubtedly served U.S. interests well and deserves the respect and support of all Members of Congress and indeed all Americans.

SOME HIGHLIGHTS

Mr. President, I ask to have printed in the RECORD at the end of my remarks a list supplied by the Arms Control and Disarmament Agency of all current signatories and parties to the NPT. The only major nonmembers are India, Pakistan, Israel, Brazil, and Cuba.

The NPT was negotiated throughout the 1960's and was signed by Secretary of State Dean Rusk on July 1, 1968. The treaty commits the United States, Britain, France, Russia, and China—the treaty's so-called nuclear-weapon states, defined as countries that detonated a nuclear explosive device before January 1, 1967—not to transfer, directly or indirectly, any nuclear explosive device or control over such a device to any other country, and "not in any way to assist, encourage, or induce" any non-nuclear-weapon state to acquire such a device. (Article I.)

As for the latter states, the treaty obligates them to forswear the bomb and to agree to full-scope safeguards of the International Atomic Energy Agency [IAEA] over all of their nuclear materials. (Articles II and III.)

The treaty also obligates all of its parties to pursue negotiations toward nuclear disarmament, indeed to pursue the eventual goal of a "treaty on general and complete disarmament under strict and effective international control." (Article VI.)

These respective obligations form the heart of the security obligations of members of the NPT. Though the treaty also encourages peaceful uses of atomic energy (Article IV), this encouragement obviously does not extend to help in making bombs or the fissile

materials for use in such bombs. The "NP" in "NPT" continues to stand for nonproliferation—not "Nuclear Proliferation" or "Nuclear Profiteering."

NEW CHALLENGES AHEAD

Now, many published critiques have already established that the NPT is far from a perfect treaty. Typically these include observations about the limits of safeguards, the treaty's lack of complete universality, the lack of mandatory sanctions for violations, the inclusion of anachronistic language about "peaceful nuclear explosions," the lack of an explicit ban on nonnuclear-weapon states helping other nonnuclear-weapon states to acquire the bomb, and allegations about the treaty's discriminatory division of the world into nuclear have's and have not's.

Though many of these specific criticisms are well-founded, I would like to identify some broader challenges that could someday jeopardize not just this treaty, but the very existence of nonproliferation as a basic norm of the international community.

Ironically, the first major challenge may well come from the disarmers. Though the United States and Russia have recently made substantial reductions in their strategic arsenals, it is possible that, someday, dozens of nonnuclear-weapon states may reconsider their membership or abandon the treaty due to what they may believe is inadequate progress toward the goal of total nuclear disarmament. What a hypocritical step that would be: it would amount not just to a form of extortion, but one based on some rather peculiar logic—"either you disarm, right now, in the interests of world peace, or we will arm." How this will serve the interests of either peace or nonproliferation is beyond me.

I agree that America and all the other nuclear-weapon states should reaffirm their obligation under the NPT to negotiate in good faith toward the ultimate goal of nuclear disarmament. But I do not read the NPT itself as compelling the United States to disarm as a precondition for other countries to abide by the treaty. The START process has already shown the world that America and Russia are serious about deep cuts in nuclear arms. And the world community will rightfully expect Britain, France, and China to make deep cuts of their own, toward the eventual goal of eliminating all such weapons, as the treaty provides. I believe it is crucial that the nuclear-weapon states fulfill their end of the NPT bargain, but I do not believe that the complex and time-consuming process of nuclear arms reductions should serve as any pretext for further proliferation.

The second major challenge to the NPT will come from advocates of commercial uses of plutonium or highly enriched uranium around the world. I would hate to see countries use the NPT as a pretext for new demands for access to sensitive technology relating to the manufacture of nuclear weapons. If, for example, the acceptance of full-scope safeguards is interpreted by some countries as constituting some form of entitlement to produce highly enriched uranium or to separate plutonium, then the world would be a more dangerous place indeed. We need less of such materials in world commerce, not more of them.

I have no doubt that IAEA safeguards are good and that they are getting better, especially thanks to the agency's Programme 93+2 plan to improve safeguards, but the agency is already too under-funded and overworked to be taking on the new jobs of safeguarding a global plutonium economy, not to mention promoting one. And I continue to question the basic safeguardability of dangerous fuel cycle operations like reprocessing and enrichment, given the difficulty of preventing or even detecting diversions which, though small in size, would be quite sufficient to make bombs.

Since no technical fix will ever eliminate all proliferation and terrorist threats from commercial uses of such materials, I would urge all supporters of nonproliferation to pursue a global moratorium or outright prohibition on all production of highly enriched uranium and the separation of all bomb-usable plutonium for any purpose. Our goal should not be the production by all or some countries of bomb-usable nuclear materials under safeguards—our goal should be a ban on the production of such materials, period.

The key point to keep in mind about safeguards is that they serve as an important instrument in America's diplomatic tool kit for fighting proliferation. By themselves, safeguards do not in any way constitute a solution to the problem of proliferation. To the extent that they complement other U.S. nonproliferation initiatives, however, they thereby deserve our full support.

A third major challenge facing the NPT is that the nuclear-weapon states will, for various reasons, compromise their not in any way to assist obligation under article I of the NPT. I have already seen signs of some erosion of this key duty, which on its face tolerates no forms of assistance.

Various current and proposed export control reforms would, if fully implemented, undoubtedly open up new strains in the NPT's no assistance taboo. I have in mind here such proposals as the following: to relax controls over sensitive dual-use items going to friendly countries or members of multilateral regimes; to drop controls over goods that are no longer state-of-the-art—as though obsolete hydrogen bombs would be any less of a proliferation threat; to regulate or prohibit only significant forms of assistance; to authorize sensitive dual-use transfers so long as there is evidence that some other country is selling similar goods—this is the old "foreign availability" loophole; and to eliminate licensing requirements for many dual-use goods, and other such dubious schemes.

Some of these themes were reflected in recent speech by a senior U.S. export control official, who said the following:

> We no longer have a clearly defined single adversary. Instead, we aim to restrict a narrow range of transactions that could assist in the development of weapons of mass destruction in irresponsible countries like Iran and Iraq. In attempting to do that, we have refocused our control system on a smaller group of truly critical goods and technologies and on specific problem end uses and end users in addition to the so-called pariah countries. [Source: Under Secretary of Commerce William Reinsch, speech before the National Security Industrial Association, February 25, 1997.]

This quote illustrates the extent to which America's NPT's duty "not in any way to assist" is already being interpreted as meaning, in effect, "* * * not to provide a narrow range of truly critical goods and technologies that could assist rogue nations to acquire nuclear explosive devices." The NPT, however, makes no distinction between so-called critical items and any other items—it rules out any and all assistance to any nonnuclear-weapon state.

The irony of such reform proposals can be seen even more when one considers that export controls affect only a tiny fraction of U.S. trade. According to Commerce Department data for 1995, $99.20 out of every $100 in U.S. exports did not even require an export license. Not only that—of those exports that did require a license in that year, only one license out of a hundred was denied. In 1991, the Commerce Department received 30,537 export license applications—by 1995 this number had plummeted to only 9,845, and only 121 of these were ultimately denied.

So the evidence is pretty slim, to say the least, to support any claim that rolling back on export controls will substantially boost America's competitiveness, except perhaps in the sense of increasing America's competitiveness as a proliferator of weapons of mass destruction. Yes indeed, America cannot only afford to comply in full with the NPT's "not in any way to assist" prohibition—from a security standpoint, it cannot afford not to comply with this obligation.

Unfortunately, the dubious claim of commercial need is not the only factor eroding this prohibition under the NPT. The other threat appears in the form of well-meaning pleas coming from two strange bedfellows—certain nongovernmental experts on nonproliferation, and various defense hawks and strategic theorists inside countries that are working on the bomb or keeping their bomb options wide open.

I am referring specifically to proposals to substitute the "management" for the "prevention" of proliferation as a goal of U.S. policy. America, they argue, should help other countries to make to proliferation safe, to ensure that new regional balances of nuclear terror remain stable, and to take steps to ensure that new nuclear arsenals around the world will remain reliable and guarantee secure second strike capabilities. In other words—they appear to believe that America should now help to convert the old cold war doctrine of "mutual assured destruction" into an export commodity.

Even highly esteemed organizations like the Council on Foreign Relations seem to be leaning in this direction. In a recent study released last January on U.S. nuclear nonproliferation policy in South Asia and sponsored by the Council, the authors not only recommended this basic approach, but also called for new U.S. arms transfers and nuclear cooperation with both India and Pakistan with no nonproliferation strings attached, specifically no requirement for full-scope IAEA safeguards. [Source: Council on Foreign Relations, "A New US Policy Toward India and Pakistan," Richard N. Haass, Chairman, January 1997.]

Russia, meanwhile, seems intent on selling two nuclear reactors to India without full-scope safeguards, while China—which has never accepted such safeguards as a nuclear supply condition—continues to engage in nuclear cooperation with Pakistan.

Unless the United States and other members of the world community rally in defense of the NPT and the heart of its verification scheme—full-scope safeguards—I fear that more and more countries will be tempted to reassess their continued membership in that treaty. After all, why agree to safeguards restraints when the benefits of membership in the treaty can be obtained without such restraints? Nobody should take the future of this treaty for granted. By their nuclear supply practices in South Asia, Russia and China are simply making proliferation pay.

CONCLUSION

Mr. President, I would like to conclude by saying that if export controls remain a valuable instrument of nonproliferation, if the inertia toward the eventual goal of nuclear disarmament is sustained, if the inertia in some countries to make large-scale commercial uses of bomb materials can be broken, and if the zealots of regional nuclear deterrence can be kept in check, then I truly believe that the NPT will be with us for quite a while and the world will be better off as a result.

If these conditions are not satisfied, I fear not just for the future of this treaty, but for the future of world peace.

The list follows:

SIGNATORIES AND PARTIES TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS—JANUARY 23, 1997

[Source: Arms Control and Disarmament Agency]

Afghanistan.
Albania.
Algeria.
Antigua and Barbuda.
Andorra.
Angola.
Argentina.
Armenia.
Australia.
Austria.
Azerbaijan.
Bahamas, The.
Bahrain.
Bangladesh.
Barbados.
Belarus.
Belgium.
Belize.
Benin.
Bhutan.
Bolivia.
Bosnia & Herzegovina.
Botswana.
Brunei.
Bulgaria.
Burkina Faso.
Burundi.
Cambodia.
Cameroon.
Canada.
Cape Verde.
Central African Republic.
Chad.
Chile.
China.
Colombia.
Comoros.
Congo, People's Republic of (Brazzaville).
Costa Rica.
Cote d'Ivoire.
Croatia.
Cyprus.
Czech Republic.
Denmark.
Djibouti.
Dominica.
Dominican Republic.
Ecuador.
Egypt.
El Salvador.
Equatorial Guinea.
Eritrea.
Estonia.
Ethiopia.
Fiji.
Finland.
Former Yugoslav.
Republic of Macedonia.
France.
Gabon.
Gambia, The.
Georgia.
Germany, Fed. Republic of.
Ghana.
Greece.
Grenada.
Guatemala.
Guinea.
Guinea-Bissau.
Guyana.
Haiti.
Holy See.
Honduras.
Hungary, Republic of.
Iceland.
Indonesia.
Iran.
Iraq.
Ireland.
Italy.
Jamaica.
Japan.
Jordan.
Kazakstan.
Kenya.
Kiribati.
Korea, Democratic People's Republic of.
Korea, Republic of.
Kuwait.
Kyrgyzstan.
Laos.
Latvia.
Lebanon.
Lesotho.
Liberia.
Libya.
Liechtenstein.
Lithuania.
Luxembourg.
Madagascar.
Malawi.
Malaysia.
Maldive Islands.
Mali.
Malta.
Marshall Islands.
Mauritania.
Mauritius.
Mexico.
Micronesia.
Moldova.
Monaco.
Mongolia.
Morocco.
Mozambique.
Myanmar (Burma).
Namibia.
Nauru.
Nepal.
Netherlands.
New Zealand.
Nicaragua.
Niger.
Nigeria.
Norway.
Oman.
Palau.
Panama.
Papua New Guinea.
Paraguay.
Peru.
Philippines.
Poland.
Portugal.
Qatar.
Romania.
Russia.
Rwanda.
St. Kitts and Nevis.
St. Lucia.
St. Vincent and the Grenadines.
San Marino.
Sao Tome and Principe.
Saudi Arabia.
Senegal.
Seychelles.
Sierra Leone.
Singapore.
Slovakia.
Slovenia.
Solomon Islands.
Somalia.
South Africa.
Spain.
Sri Lanka.
Sudan.
Suriname.
Swaziland.
Sweden.
Switzerland.
Syrian Arab Republic.
Taiwan.
Tajikistan.

Tanzania.
Thailand.
Togo.
Tonga.
Trinidad and Tobago.
Tunisia.
Turkey.
Tuvalu.
Turkmenistan.
Uganda.
Ukraine.
United Arab Emirates.
United Kingdom.
United States.
Uruguay.
Uzbekistan.
Vanuatu.
Venezuela.
Vietnam, Socialist Republic of.
Western Samoa.
Yemen.
Yugoslavia, Socialist Federal Republic of.
Zaire.
Zambia.
Zimbabwe.
Total: 185 (Total does not include Taiwan or SFR Yugoslavia, which has dissolved.)●

ORDERS FOR THURSDAY, MARCH 6, 1997

Mr. SHELBY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 noon on Thursday, March 6. I ask unanimous consent that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted, and that there be a period of morning business until the hour of 1:30 p.m. with Senators to speak for up to 5 minutes each except for the following: Senator DEWINE, 20 minutes; Senator GRAHAM, 15 minutes; Senator TORRICELLI, 15 minutes; Senator COATS, 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SHELBY. For the information of all Senators, following morning business tomorrow, the majority leader has indicated that various nominations may be available for consideration on Thursday. Therefore, rollcall votes are possible during Thursday's session.

ADJOURNMENT UNTIL TOMORROW

Mr. SHELBY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:47 p.m. adjourned until Thursday, March 6, 1997, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate March 5, 1997:

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be major general

BRIG. GEN. KEVIN B. KUKLOK, x...

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be major general

BRIG. GEN. TERRENCE P. MURRAY, x...

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE U.S. MARINE CORPS UNDER TITLE 10, UNITED STATES CODE, SECTION 624:

To be colonel

DIRK R. AHLE, x...
STEPHEN W. BAIRD, x...
PAUL BALASH III, x...
RALPH A. BALDWIN, x...
BILLY C. BELL, x...
ROBERT J. BIGGS, x...
GEORGE A. BISZAK, x...
THOMAS P. BREHM, x...
JOE C. BURGIN III, x...
PAUL J. CAHILL, x...
STEVEN C. CARPENTER, x...
BENJAMIN L. CASSIDY, x...
CLAUDE C. CASTAING, JR., x...
ROBERT W. CERNEY, x...
RONALD S. COLEMAN, x...
JOHN W. COWAN, JR., x...
MARSHA L. CULVER, x...
DAVID T. DARRAH, x...
MARK S. DAVIS, x...
STEVEN F. DAY, x...
JERRY L. DURRANT, x...
DANIEL M. DYKSTRA, x...
JOEL P. EISSINGER, x...
ROBERT W. ELLIS, JR., x...
REX A. ESTILOW, x...
JOHN D. FAVORS, x...
BARRY M. FORD, x...
RICHARD W. GOODALE, JR., x...
GREGORY L. GOODMAN, x...
DAVID F. GOOLD, x...
TERRENCE M. GORDON, x...
THOMAS X. HAMMES, x...
RICHARD A. HOBBS, JR., x...
CARLOS R. HOLLIFIELD, x...
JOHN B. HULICK, x...
DAVID W. HURLEY, x...
JONATHAN D. INGHRAM, x...
LARRY A. JOHNSON, x...
THOMAS V. JOHNSON, x...
CHRISTOPHER C. KAUFFMANN, x...
CHARLES E. KERR, x...
JAMES J. KRATSAS, x...
MARY A. KRUSADOSSIN, x...
COLIN D. LAMPARD, x...
DENNIS L. LAWRENCE, x...
JAMES E. LENDERMAN, JR., x...
DAVID G. LINNEBUR, x...
THOMAS M. LYTLE, x...
RONALD S. MAKUTA, x...
RONALD L. MCCLAIR, x...
PAUL P. MCNAMARA, x...
JAMES M. MCNEAL, x...
WILLIAM A. MEIER, x...
TERRY D. METLER, x...
ROBERT E. MILSTEAD, JR., x...
CHARLES W. MORRIS, x...
ROBERT B. NELLER, x...
RICHARD M. NIXON, x...
DANIEL C. OBRIEN, x...
DANIEL P. OBRIEN, x...
ALAN C. PENDLETON, x...
MAXIE W. PHILLIPS, x...
WILLIAM J. POWELL, x...
PAUL R. PUCKETT, x...
DAVID P. RANN, x...
GREGORY G. RATHS, x...
ARTHUR M. REYNOLDS, JR., x...
BLAKE J. ROBERTSON, x...
JOHN S. ROGERS III, x...
CHARLES T. RUSHWORTH III, x...
KEVIN M. SANDKUHLER, x...
RICHARD M. SCOTT, x...
THOMAS E. SEAL, x...
ROBERT E. STEFFENSEN, x...
LESLIE STEIN, x...
ROBERT W. STRAHAN, x...
JOHN L. SWEENEY, JR., x...
JAMES S. SWIFT, x...
JOHN M. TAYLOR, x...
MICHAEL W. THUMM, x...
FELIPE TORRES, x...
RICHARD T. TRYON, x...
ALLEN E. TURBYFILL, x...
JOHN H. TURNER, x...
EDWARD G. USHER III, x...
JOHN VALENTIN, x...
ROBERT G. WILCOX, x...
CHRISTOPHER A. WILK, x...
MICHAEL E. WILLIAMS, x...
DAVID L. WRIGHT, x...
GERALD L. YANELLO, x...
PHILIP N. YFF, x...

CONFIRMATION

Executive Nomination Confirmed by the Senate March 5, 1997:

EXECUTIVE OFFICE OF THE PRESIDENT

CHARLENE BARSHEFSKY, OF THE DISTRICT OF COLUMBIA, TO BE U.S. TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.